

**A.M. Best Rated A++**

This Policy is issued by the stock insurance company listed above (“Insurer”).

THE INSURED PERSONS AND ORGANIZATION AND EMPLOYMENT PRACTICES LIABILITY SECTIONS OF THIS POLICY, WHICHEVER ARE APPLICABLE, COVER ONLY CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR, IF ELECTED, THE EXTENDED PERIOD ALL OTHER COVERAGE UNDER THIS POLICY CEASES UPON THE TERMINATION OF THE POLICY. THE BASIC EXTENDED REPORTING PERIOD STARTS ON THE EFFECTIVE DATE OF THE TERMINATION OF COVERAGE AND LASTS FOR 60 DAYS. A SUPPLEMENTAL EXTENDED REPORTING PERIOD THAT PROVIDES SUPPLEMENTAL EXTENDED REPORTING PERIOD COVERAGE FOR A PERIOD OF UP TO 3 YEARS WILL BE MADE AVAILABLE TO THE INSURED FOR AN ADDITIONAL PREMIUM.

DURING THE FIRST SEVERAL YEARS OF THE CLAIMS-MADE RELATIONSHIP, CLAIMS-MADE RATES ARE COMPARATIVELY LOWER THAN OCCURRENCE RATES. SUBSTANTIAL ANNUAL PREMIUM INCREASES CAN BE EXPECTED, INDEPENDENT OF OVERALL RATE LEVEL INCREASES, UNTIL THE CLAIMS-MADE RELATIONSHIP REACHES MATURITY.

THERE IS A POTENTIAL FOR COVERAGE GAPS THAT MAY ARISE UPON EXPIRATION OF ANY EXTENDED REPORTING PERIOD COVERAGE IF PRIOR ACTS COVERAGE IS NOT SUBSEQUENTLY PROVIDED BY ANOTHER INSURER.

THE LIMITS OF LIABILITY AVAILABLE TO PAY INSURED LOSS SHALL NOT BE REDUCED BY AMOUNTS INCURRED FOR COSTS, CHARGES AND EXPENSES UNLESS OTHERWISE PROVIDED HEREIN. TERMS THAT APPEAR IN BOLD FACE TYPE HAVE SPECIAL MEANING. PLEASE REFER TO THE APPROPRIATE DEFINITIONS SECTIONS OF THIS POLICY.

**Policy Number:** NFPNYG280847173-006  
**Renewal of:** NFPNYG280847173-005

Item A. **Parent Organization & Principal Address:**  
Museum of Chinese in America  
215 Centre St  
New York, NY 10013-3601

Item B. **Policy Period:** From **March 13, 2021** to **March 13, 2022**  
12:01 a.m. local time at the Principal Address shown in Item A.

Item C. Coverage Section(s):

**INSURED PERSONS AND ORGANIZATION**

1. Limit of Liability:
  - a. \$5,000,000 aggregate for all **Loss**
  - b. \$1,000,000 additional aggregate for all **Loss** under Insuring Clause A1, subject to 1c immediately below,
  - c. \$6,000,000 maximum aggregate for this Coverage Section
2. Retentions:
  - \$0 each **Claim** under Insuring Clause 1
  - \$1,000 each **Claim** under Insuring Clause 2
  - \$1,000 each **Claim** under Insuring Clause 3
3. **Continuity Date:**  
03-13-2015



Item H. Forms attached at **Policy** issuance:

<b>Form Number</b>	<b>Edition</b>	<b>Title</b>
PF44263	1014	NOT-FOR-PROFIT ORGANIZATION MANAGEMENT INDEMNITY PACKAGE DECLARATIONS - NEW YORK
TRIA11e	0820	DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT
PF28172a	1114	INSURED PERSONS AND ORGANIZATION COVERAGE SECTION
PF28169	1009	EMPLOYMENT PRACTICES LIABILITY COVERAGE SECTION
PF43532	0714	GENERAL TERMS AND CONDITIONS
PF43412	0614	UNLIMITED EXTENSION
EPLIAssist	0329	EPL Assist
CC1K11i	0218	SIGNATURES
PF18480	0909	SEXUAL MISCONDUCT, CHILD ABUSE, NEGLECT EXCLUSION
PF18481	0705	SEXUAL MISCONDUCT, CHILD ABUSE, NEGLECT EXCLUSION
PF18490	0909	PROFESSIONAL SERVICES ERRORS AND OMISSIONS EXCLUSIONS
PF39190	0813	EPL COVERAGE SECTION AMENDED TO INCLUDE WAGE AND HOUR CLAIMS COSTS, CHARGES AND EXPENSES COVERAGE ONLY SUBLIMIT FOR MULTIPLE PLAINTIFF CLAIMS
PF43534	0714	KNOWN WRONGFUL ACT, FACT, CIRCUMSTANCE SITUATION EXCLUSION
PF44267	1114	AMENDATORY ENDORSEMENT – NEW YORK
PF44740	1114	FIDUCIARY LIABILITY COVERAGE ENDORSEMENT – NEW YORK
ALL20887	1006	CHUBB PRODUCER COMPENSATION PRACTICES & POLICIES
ILP001	0104	U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS
PF45354	0115	Cap On Losses From Certified Acts of Terrorism
PF46422	0715	TRADE OR ECONOMIC SANCTIONS ENDORSEMENT

IN WITNESS WHEREOF, the **Insurer** has caused this **Policy** to be signed by its President and Secretary, and countersigned by a duly authorized representative of the **Insurer**.

DATE: 02-25-2021

\_\_\_\_\_  
Authorized Representative

## DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

### **Disclosure Of Premium**

In accordance with the federal Terrorism Risk Insurance Act, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to coverage for terrorist acts certified under the Terrorism Risk Insurance Act. The portion of your premium attributable to such coverage is shown in this endorsement or in the policy Declarations.

### **Disclosure Of Federal Participation In Payment Of Terrorism Losses**

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals; 80% of that portion of the amount of such insured losses that exceeds the applicable insurer retention. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

### **Cap On Insurer Participation In Payment Of Terrorism Losses**

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

COVERAGE OF "ACTS OF TERRORISM" AS DEFINED BY THE REAUTHORIZATION ACT WILL BE PROVIDED FOR THE PERIOD FROM THE EFFECTIVE DATE OF YOUR NEW OR RENEWAL POLICY THROUGH THE EARLIER OF THE POLICY EXPIRATION DATE OR DECEMBER 31, 2027. EFFECTIVE DECEMBER 31, 2027 THE TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT EXPIRES.

Terrorism Risk Insurance Act premium: \$0.

In consideration of the payment of premium, in reliance on the **Application** and subject to the Declarations, and terms and conditions of this **Policy**, the **Insurer** and the **Insureds** agree as follows.

**A. INSURING CLAUSES**

1. The **Insurer** shall pay the **Loss** of the **Insured Persons** for which the **Insured Persons** are not indemnified by the **Organization** and which the **Insured Persons** have become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Period**, and reported to the **Insurer** pursuant to section E.1 herein, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.
2. The **Insurer** shall pay the **Loss** of the **Organization** for which the **Organization** has indemnified the **Insured Persons** and which the **Insured Persons** have become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Period**, and reported to the **Insurer** pursuant to section E.1 herein, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.
3. The **Insurer** shall pay the **Loss** of the **Organization** which the **Organization** becomes legally obligated to pay by reason of a **Claim** first made against the **Organization** during the **Policy Period** or, if applicable, the **Extended Period**, and reported to the **Insurer** pursuant to section E.1 herein, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.
4. **Special Event** Management Coverage

The **Insurer** shall pay the **Special Event Management Expense** for which the **Organization** becomes legally obligated to pay by reason of a **Special Event** first occurring during the **Policy Period**, but only up to the limit of liability for the **Special Event Management Fund**.

**B. DEFINITIONS**

1. **Adverse Publicity** means the publication of unfavorable information regarding the **Organization** which can reasonably be considered to materially reduce public confidence in the competence, integrity or viability of the **Organization** to conduct business. Such publication must occur in a report about an **Insured** appearing in:
  - a) a daily newspaper of general circulation; or
  - b) a radio or television news program.
2. **Claim** means:
  - a) a written demand against any **Insured** for monetary damages or non-monetary or injunctive relief;
  - b) a written demand by one or more of the securities holders of the **Organization** upon the board of directors or the management board of the **Organization** to bring a civil proceeding against any of the **Insured Persons** on behalf of the **Organization**;
  - c) a civil proceeding against any **Insured** seeking monetary damages or non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading;
  - d) a criminal proceeding against any **Insured**, commenced by a return of an indictment or similar document, or receipt or filing of a notice of charges;

- e) an arbitration proceeding against any **Insured** seeking monetary damages or non-monetary or injunctive relief;
  - f) a civil, administrative or regulatory proceeding against any **Insured** commenced by the filing of a notice of charges or similar document;
  - g) a civil, criminal, administrative or regulatory investigation commenced by the service upon or other receipt by any natural person **Insured** of a written notice, investigative order, or subpoena from the investigating authority identifying such natural person **Insured** as an individual, against whom a proceeding described in paragraphs c, d or f immediately above may be commenced; or
  - h) a written request of the **Insured** to toll or waive a statute of limitations relating to a **Claim** described in paragraphs a through g immediately above.
3. **Continuity Date** means the date set forth in Item C of the Declarations relating to this Coverage Section.
4. **Costs, Charges and Expenses** means:
- a) reasonable and necessary legal costs, charges, fees and expenses incurred by the **Insurer**, or by any **Insured** with the **Insurer's** consent, in defending **Claims** and the premium for appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to furnish such bonds and only for the amount of such judgment that is up to the applicable Limit of Liability; and
  - b) reasonable and necessary legal costs, charges, fees and expenses incurred by any of the **Insureds** in investigating a written demand, by one or more of the securities holders of the **Organization** upon the board of directors or the management board of the **Organization**, to bring a civil proceeding against any of the **Insured Persons** on behalf of the **Organization**.
- Costs, Charges and Expenses** do not include salaries, wages, fees, overhead or benefit expenses of or associated with officers or employees of the **Organization** or **Special Event Management Expenses**.
5. **Employee** means any past, present or future:
- a) full-time, part-time, seasonal, or temporary employee of the **Organization**, other than an **Executive**, but only while that person is acting in the capacity as such;
  - b) person leased to the **Organization** so long as such person is working solely for the **Organization** and only for conduct within his or her duties, but only if the **Organization** indemnifies such leased person in the same manner as the **Organization's** employees; and
  - c) volunteer whose labor or services is engaged and directed by the **Organization**, but only while that person is acting in the capacity as such.
6. **Executive** means any past, present or future:
- a) duly elected or appointed director, officer, trustee, trustee emeritus, executive director, department head or committee member (of a duly constituted committee) of the **Organization**;
  - b) the functional equivalent of an **Executive** listed in paragraph a above in the event the **Organization** is incorporated or domiciled outside the United States; or
  - c) General Counsel and Risk Manager (or equivalent position) of the **Parent Organization**.
7. **Excess Benefit** means an excess benefit as defined in the Taxpayer Bill of Rights Act 2, 26 U.S.C. 4958.
8. **Insured** means the **Organization** and any **Insured Person**.
9. **Insured Person** means any:

- a) **Executive** of an **Organization**;
- b) **Employee** of an **Organization**; or
- c) **Outside Entity Executive**.

10. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of facts, circumstances, situations, events, transactions or causes.

11. **Loss** means damages, judgments, settlements, pre-judgment or post-judgment interest awarded by a court, and **Costs, Charges and Expenses** incurred by **Insured Persons** under Insuring Clauses 1 or 2, or the **Organization** under Insuring Clause 3.

**Loss** also means any **Excess Benefits** penalty assessed in the amount of 10% by the Internal Revenue Service (herein known as the "IRS") against any **Insured** for management's involvement in the award of an **Excess Benefit** and **Costs, Charges and Expenses** attributable thereto. Provided, however, **Loss** shall not include:

- i) any 25% penalty assessed by the **IRS** against an **Insured** deemed to have received an **Excess Benefit**;
- ii) **Costs, Charges or Expenses** incurred to defend an **Insured Person** if it has been determined in fact that such **Insured Person** received an **Excess Benefit**; or
- iii) any 200% penalty assessed by the **IRS** for failure to correct the award of an **Excess Benefit**.

**Loss** does not include:

- a) taxes, fines or penalties, except an **Excess Benefits** penalty as set forth above;
- b) matters uninsurable under the laws pursuant to which this **Policy** is construed;
- c) punitive or exemplary damages, or the multiple portion of any multiplied damage award, except to the extent that such punitive or exemplary damages, or multiplied portion of any multiplied damage award are insurable under the internal laws of any jurisdiction which most favors coverage for such damages and which has a substantial relationship to the **Insureds, Insurer, this Policy** or the **Claim** giving rise to such damages;
- d) the cost of any remedial, preventative or other non-monetary relief, including without limitation any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement or governmental authority;
- e) any amount for which the **Insured** is not financially liable or legally obligated to pay;
- f) the costs to modify or adapt any building or property to be accessible or accommodating, or more accessible or accommodating, to any person; or,
- g) **Special Event Management Expense**.

Subject to the other terms, conditions and exclusions of this **Policy, Loss** shall also include **Costs, Charges and Expenses** for items specifically excluded from **Loss** pursuant to (a) through (f) above, including, but not limited to, **Costs, Charges and Expenses** incurred in connection with a **Tax Claim**.

12. **Outside Entity** means:

- a) any non-profit company in which any **Insured Person** is a director, officer, trustee, governor, executive director or similar position of such non-profit company; and
- b) any other company specifically identified by endorsement to this **Policy**.

13. **Personal Injury Offense** means:
- a) libel, slander, defamation or publication or utterance in violation of an individual's right of privacy;
  - b) wrongful entry or eviction or other invasion of the right of occupancy; or,
  - c) false arrest or wrongful detention.
14. **Publisher's Liability** means any actual or alleged infringement of trademark or copyright, unauthorized use of title, plagiarism, or misappropriation of ideas.
15. **Special Event** means one of the following, except where coverage is otherwise excluded under Exclusions 1(b) or (k) of this Coverage Section:
- a) The incapacity, death or state or federal criminal indictment of an **Insured Person** for whom the **Organization** has purchased and continues to maintain key individual life insurance;
  - b) The cancellation, withdrawal or revocation of \$100,000 or more in funding, donation(s), grant(s) or bequest(s) by a non-government entity or person to the **Organization**;
  - c) The disclosure by the **Organization** of (1) its intention to file or its actual filing for protection under federal bankruptcy laws; or, (2) a third-party's intention to file or its actual filing of an involuntary bankruptcy petition under federal bankruptcy laws with respect to the **Organization**;
  - d) The disclosure by the **Organization** of the threatened or actual commencement by a third-party of an action, audit or investigation alleging a **Wrongful Employment Practice** (as defined in the Employment Practices Coverage Section) by the **Organization** which has caused or is reasonably likely to cause **Adverse Publicity**;
  - e) The commencement or threat of litigation or other proceedings by any governmental or regulatory agency against an **Organization**;
  - f) An accusation that an **Insured Person**, or an individual for whom an **Insured** is legally responsible for, has intentionally caused bodily injury to, or death of, or has sexually abused any person in the performance of his or her duties with the **Organization**;
  - g) An **Employee** of the **Organization** was the victim of a violent crime while on the premises of the **Organization**;
  - h) A child was abducted or kidnapped while under the care or supervision of the **Organization**; or
  - i) Any other material event which, in the good faith opinion of the **Organization**, has caused or is reasonably likely to result in **Adverse Publicity**, but only if such material event is scheduled for coverage by written endorsement to this **Policy**.
16. **Special Event Management Expense** means the following expenses incurred by the **Organization** during a period beginning 90 days prior to and in reasonable anticipation of a **Special Event** and ending 90 days after an actual or reasonably anticipated **Special Event**, irrespective of whether a **Claim** is actually made with respect to the subject **Special Event**; provided, however, that the **Insurer** must have been notified of the **Special Event Management Expense** within 30 days of the date the **Organization** first incurs the subject **Special Event Management Expense**:
- a) The reasonable and necessary expenses directly resulting from a **Special Event** which the **Organization** incurs for **Special Event Management Services** provided to the **Organization** by a **Special Event Management Firm**, and
  - b) The reasonable and necessary expenses directly resulting from a **Special Event** which the **Organization** incurs for: (a) advertising, printing, or the mailing of matter relevant to the **Special Event**, and (b) out of



pocket travel expenses incurred by or on behalf of the **Organization** or the **Special Event Management Firm**; provided, however, **Special Event Management Expense** does not include those amounts which otherwise would constitute compensation, benefits, fees, overhead, charges or expenses of an **Insured** or any of the **Insured's Employees**.

17. **Special Event Management Firm** means a marketing firm, public relations firm, law firm, or other professional services entity retained by the **Insurer**, or by the **Organization** with the **Insurer's** prior written consent, to perform **Special Event Management Services** arising from a **Special Event**.
18. **Special Event Management Fund** means the amount set forth in Item H of the Declarations.
19. **Special Event Management Services** means the professional services provided by a **Special Event Management Firm** in counseling or assisting the **Organization** in reducing or minimizing the potential harm to the **Organization** caused by the public disclosure of a **Special Event**.
20. **Tax Claim** means a **Claim** seeking an assessment of taxes, initial taxes, additional taxes, tax deficiencies, excise taxes or penalties pursuant to the following sections of the Internal Revenue Code of 1986 (as amended):
  - a) Section 4911 (tax on excess expenditures to influence legislation);
  - b) Section 4940 (a) (tax on net investment income of tax-exempt foundations);
  - c) Section 4941 (taxes on self-dealing);
  - d) Section 4942 (taxes on failure to distribute income);
  - e) Section 4943 (taxes on excess business holding);
  - f) Section 4944 (taxes on investments which jeopardize charitable purpose);
  - g) Section 4945 (taxes on taxable expenditures);
  - h) Section 6652 (c) (1) (A) and (B) (penalties for failure to file certain information returns or registration statements);
  - i) Section 6655 (a) (1) (penalties for failure to pay estimated income tax); and
  - j) Section 6656 (a) and (b) (penalties for failure to make deposit of taxes).
21. **Wrongful Act** means any actual or alleged error, omission, misleading statement, misstatement, neglect, breach of duty, **Publishers' Liability** or **Personal Injury Offense** allegedly committed or attempted by:
  - a) any **Insured Person**, while acting in the capacity as such, or any matter claimed against any **Insured Person** solely by reason of his or her serving in such capacity;
  - b) any **Insured Person**, while acting in the capacity as a director, officer, trustee, governor, executive director or similar position of any **Outside Entity** where such service is with the knowledge and consent of the **Organization**;
  - c) the **Organization**, but only with respect to Insuring Clause 3 of this Coverage Section;
  - d) with respect to all **Insureds**, subject to 21 a), b) and c) above, **Wrongful Act** shall specifically include violations of the Sherman Antitrust Act or similar federal, state or local statutes or rules.

## C. EXCLUSIONS

### 1. Exclusions Applicable To All Insuring Clauses

Except as limited under Insuring Agreement 4, **Special Event** Management Coverage, the **Insurer** shall not be liable for **Loss** under this Coverage Section on account of any **Claim**:

- a) for actual or alleged bodily injury, sickness, disease, death, false imprisonment, mental anguish, emotional distress, or damage to or destruction of any tangible or intangible property including loss of use thereof, whether or not such property is physically injured;
- b) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
  - (i) any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time; or
  - (ii) any other **Wrongful Act**, whenever occurring, which together with a **Wrongful Act** which has been the subject of such prior notice, would constitute **Interrelated Wrongful Acts**;
- c) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
  - (i) the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or
  - (ii) any direction or request that any **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so;

provided, however, this exclusion shall not apply to any **Claim** brought directly, derivatively or otherwise by one or more members of the **Organization** in their capacity as such, or, except as to **Clean Up Costs**, to any **Non-Indemnifiable Loss** of an **Insured Person**, or **Loss** of an **Insured Person** for which the **Organization** does not indemnify such **Insured Person** because of either the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Organization**, or because of the **Organization** becoming a debtor-in-possession.

For purposes of this exclusion:

**Clean Up Costs** means expenses, including but not limited to legal and professional fees, incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**;

**Non-Indemnifiable Loss** means **Loss** for which a **Organization** has not indemnified, and is not permitted or required to indemnify, an **Insured Person** pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of a **Organization**;

**Pollutants** means any substance exhibiting any hazardous characteristics as defined by, or identified on, a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipal or local counterpart thereof or any foreign equivalent. Such substances shall include, without limitation, solids, liquids, gaseous, biological, bacterial or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials (including materials to be reconditioned, recycled or reclaimed). **Pollutants** shall also mean any other air emission or particulate, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, noise, fungus (including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi, but does not include any fungi intended by the **Insured** for consumption) and electric or magnetic or electromagnetic field;

- d) for any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, as amended, or any rules or regulations promulgated thereunder, or similar provisions of any federal, state or local statutory or common law;
- e) brought by or on behalf of the **Organization** against any **Insured Person**; provided, however, this exclusion shall not apply to any derivative **Claim** made on behalf of the **Organization** by a member, an attorney general or any other such representative party if such action is brought and maintained totally independently of and totally without the solicitation, assistance, active participation or intervention of any **Insured Person** or the **Organization**; provided, however, that **Whistleblower Conduct** by an **Insured Person**, other than a director or equivalent position, shall not be considered solicitation, assistance, active participation, or intervention of an **Insured Person**.

Provided further that this exclusion shall not apply to any **Claim** that is brought or maintained by any bankruptcy or insolvency trustee or bankruptcy appointed representative of the **Organization**, or receiver, examiner, liquidator or similar official for the **Organization**.

For purposes of this exclusion, **Whistleblower Conduct** means any of the activity set forth in 18 U.S.C. Sec. 1514A(a), engaged in by a whistleblower with a federal regulatory or law enforcement agency, Member of Congress or any committee of Congress, or person with supervisory authority over the whistleblower, or an enforcement action by the whistleblower set forth in 18 U.S.C. Sec. 1514A (b).

- f) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
  - (i) any deliberately fraudulent or criminal act of an **Insured**; provided, however this exclusion f)(i) shall not apply unless and until there is a final adjudication against such **Insured** as to such conduct; or
  - (ii) the gaining of any profit, remuneration or financial advantage to which any **Insured Person** was not legally entitled; provided, however this exclusion f)(ii) shall not apply unless and until there is a final adjudication against such **Insured Person** as to such conduct.
- g) for the return by any **Insured Person** of any remuneration paid to him or her without the previous approval of the appropriate governing body of the **Organization** or **Outside Entity**, which payment without such previous approval shall be held to be in violation of law;
- h) against any **Insured Person** of any **Subsidiary** or against any **Subsidiary** alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** actually or allegedly committed or attempted by a **Subsidiary** or **Insured Person** thereof, before the date such entity became a **Subsidiary** or after the date such entity ceased to be a **Subsidiary**;
- i) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** actually or allegedly committed subsequent to a **Takeover**;
- j) for a **Wrongful Act** actually or allegedly committed or attempted by any **Insured Person** in his or her capacity as a director, officer, trustee, manager, member of the board of managers or equivalent executive of a limited liability company or employee of, or independent contractor for or in any other capacity or position with any entity other than the **Organization**; provided, however, that this exclusion shall not apply to **Loss** resulting from any such **Claim** to the extent that:
  - (i) such **Claim** is based on the service of any **Insured Person** as a director, officer, trustee, governor, executive director or similar position of any **Outside Entity** where such service is with the knowledge and consent of the **Organization**; and
  - (ii) such **Outside Entity** is not permitted or required by law to provide indemnification to such **Insured Person**; and
  - (iii) such **Loss** is not covered by insurance provided by any of the **Outside Entity's** insurer(s);
- k) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:

- (i) any prior or pending litigation or administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry filed or pending on or before the **Continuity Date**; or
  - (ii) any fact, circumstance, situation, transaction or event underlying or alleged in such litigation or administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry;
- l) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
- (i) improper payroll deductions, unpaid wages or other compensation, misclassification of employee status, or any violation of any law, rule or regulation, or amendments thereto, that governs the same topic or subject; or
  - (ii) any other employment or employment-related matters brought by or on behalf of or in the right of an applicant for employment with the **Organization**, or any **Insured Person**, including any voluntary, seasonal, temporary, leased or independently-contracted employee of the **Organization**;
- m) alleging, arising out of, or in any way relating to any purchase or sale of securities by the **Parent Organization, Subsidiary, or Outside Entity** or **Claims** brought by securities holders of an **Organization** or **Outside Entity** in their capacity as such; provided, however, this exclusion shall not apply to the issuance by an **Organization** of bond debt or **Claims** brought by bond debt holders;
- n) for that portion of **Loss** which is covered under any other Coverage Section of this **Policy**.
2. Exclusions Applicable Only To Insuring Clause A3

**Insurer** shall not be liable for **Loss** on account of any **Claim**:

- a) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving the actual or alleged breach of any contract or agreement; except and to the extent the **Organization** would have been liable in the absence of such contract or agreement; or
- b) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, any infringement, misappropriation or violation of any patent, service marks, trade secrets, title or other proprietary or licensing rights or intellectual property of any products, technologies or services.

No **Wrongful Act** of one or more **Insureds** shall be imputed to any other **Insureds** for the purpose of determining the applicability of any of the above exclusions.

#### **D. LIMIT OF LIABILITY AND RETENTIONS**

- 1. The liability of the **Insurer** shall apply only to that part of **Loss** which is excess of the Retention amounts applicable to this Coverage Section, as shown in Item C of the Declarations. Such Retentions shall be borne uninsured by the **Insureds** and at their own risk. If different parts of a single **Claim** are subject to different applicable Retentions under this Coverage Section, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention.
- 2. As shown in Item C.1 of the Declarations relating to this Coverage Section, the following Limits of Liability of the **Insurer** shall apply:
  - a) The amount set forth in Item C.1.a relating to this Coverage Section shall be the aggregate limit of liability for the payment of **Loss**, other than **Costs, Charges and Expenses**, under all Insuring Clauses for this Coverage Section, subject to additional payments for **Loss** under Insuring Clause A1 as further described in paragraph 2b) immediately below.

- b) The amount set forth in Item C.1.b of the Declarations relating to this Coverage Section shall be the aggregate limit of liability for the payment of **Loss**, other than **Costs, Charges and Expenses**, under Insuring Clause A1 in addition to the limit described in paragraph 2a) immediately above; provided, all payments for **Loss** under the additional limit described in this paragraph 2b) shall be excess of the limit described in paragraph 2a) above, and excess of any other available insurance that is specifically excess to this **Policy**. Such excess insurance must be completely and fully exhausted through the payment of loss, including but not limited to defense costs thereunder, before the **Insurer** shall have any obligations to make any payments under the additional limit described in this paragraph 2b).
  - c) The amount set forth in Item C.1.c of the Declarations relating to this Coverage Section shall be the maximum aggregate limit of liability for the payment of **Loss**, other than **Costs, Charges and Expenses**, under all Insuring Clauses for this Coverage Section. The limits of liability set forth in C.1.a and C.1.b relating to this Coverage Section shall be a part of and not in addition to the maximum aggregate limit of liability set forth in Item C.1.c for this Coverage Section.
3. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following times, regardless of whether such date is before or during the **Policy Period**:
    - a) the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Act** is first made; or
    - b) the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to Section E.2, below.
  4. The Retention applicable to Insuring Clause A.2 shall apply to **Loss** resulting from any **Claim** if indemnification for the **Claim** by the **Organization** is required or permitted by applicable law, to the fullest extent so required or permitted, regardless of whether or not such actual indemnification by the **Organization** is made, except and to the extent such indemnification is not made by the **Organization** solely by reason of the **Organization's** financial insolvency.
  5. Payments of **Loss**, other than **Costs, Charges and Expenses**, by **Insurer** shall reduce the Limit(s) of Liability under this Coverage Section. **Costs, Charges and Expenses** are not part of, and are in addition to, the Limits of Liability and payment of **Costs, Charges and Expenses** shall not reduce the Limits of Liability. If such Limit(s) of Liability are exhausted by payment of **Loss**, the obligations of the **Insurer** under this Coverage Section are completely fulfilled and extinguished, including any obligation to pay **Costs, Charges and Expenses** for any **Claim**.
  6. The **Special Event Management Fund** is the **Insurer's** maximum liability for all **Special Event Management Expenses** arising from any and all **Special Events** occurring during the **Policy Period**. This limit shall be the **Insurer's** maximum liability under this **Policy** regardless of the number of **Special Events** reported during the **Policy Period**. The **Insurer's** obligation to pay **Special Event Management Expenses** terminates and ends upon the exhaustion of the **Special Event Management Fund**. The **Special Event Management Fund** shall be in addition to the aggregate Limit of Liability set forth in Item H of the Declarations.

#### **E. SPECIAL EVENT MANAGEMENT COVERAGE PROVISIONS**

1. There shall be no Retention applicable to **Special Event Management Expenses** and the **Insurer** shall pay such **Special Event Management Expenses** from the first dollar subject to all other terms and conditions of this **Policy**, including the **Policy** limit.
2. An actual or anticipated **Special Event** shall be reported to the **Insurer** as soon as practicable, but in no event later than 30 days after the **Organization** first incurs **Special Event Management Expenses** for which coverage will be requested under this **Policy**.

#### **F. NOTIFICATION**

For coverage under this **Policy** (other than coverage for a **Special Event**):

1. The **Insureds** shall, as a condition precedent to their rights to payment under this Coverage Section only, give **Insurer** written notice of any **Claim** as soon as practicable after the **Organization's** general counsel, risk manager, chief executive officer or chief financial officer (or equivalent positions) first becomes aware of such **Claim**, but in no event later than 60 days after the end of the **Policy Period**, or respecting any **Claim** first made against the **Insureds** during the **Extended Period**, if purchased, 60 days after the end of the **Extended Period**.
2. If, during the **Policy Period** or the **Discovery Period**, if purchased, any of the **Insureds** first becomes aware of facts or circumstances which may reasonably give rise to a future **Claim** covered under this **Policy**, and if the **Insureds**, during the **Policy Period** or the **Discovery Period**, if purchased, give written notice to **Insurer** as soon as practicable of:
  - a) a description of the **Wrongful Act** allegations anticipated;
  - b) the identity of the potential claimants;
  - c) the circumstances by which the **Insureds** first became aware of the **Wrongful Act**;
  - d) the identity of the **Insureds** allegedly involved;
  - e) the consequences which have resulted or may result; and
  - f) the nature of the potential monetary damages and non-monetary relief;

then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Coverage Section to have been made at the time such notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

3. Notice to **Insurer** shall be given to the address shown under Item G of the Declarations for this **Policy**.

#### **G. SETTLEMENT AND DEFENSE**

1. It shall be the duty of the **Insurer** and not the duty of the **Insureds** to defend any **Claim**. Such duty shall exist even if any of the allegations are groundless, false or fraudulent. The **Insurer's** duty to defend any **Claim** shall cease when the Limits of Liability have been exhausted by the payment of **Loss**, including the **Insurer's** obligation to pay **Costs, Charges and Expenses**.
2. The **Insurer** may make any investigation it deems necessary, and shall have the right to settle any **Claim**; provided, however, no settlement shall be made without the consent of the **Parent Organization**, such consent not to be unreasonably withheld.
3. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Costs, Charges and Expenses** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Costs, Charges and Expenses**, assumed obligation or admission to which it has not consented. The **Insureds** shall promptly send to the **Insurer** all settlement demands or offers received by any **Insured** from the claimant(s).
4. The **Insureds** agree to provide the **Insurer** with all information, assistance and cooperation which the **Insurer** reasonably requests and agree that, in the event of a **Claim**, the **Insureds** will do nothing that shall prejudice the position of the **Insurer** or its potential or actual rights of recovery.
5. If the **Insurer** recommends a settlement within the **Policy** Limit of Liability which is agreed to by the claimant ("**Settlement Opportunity**"), and:
  - a) the **Insureds** consent to such settlement within 30 days of the date the **Insureds** are first made aware of the **Settlement Opportunity**; and
  - b) such consent occurs within the first 90 days after the **Claim** is first reported; and

c) such **Claim** is reported within the first 30 days after it is made,

then, in the event the **Claim** settles as a result of such **Settlement Opportunity**, the Retention applicable to such **Claim** shall be reduced by 10% for such **Claim**. It shall be a condition to such reduction that all **Insureds** must consent to such settlement.

## H. OTHER INSURANCE

If any **Loss** covered under this Coverage Section is covered under any other valid and collectible insurance, then this **Policy** shall cover the **Loss**, subject to its terms and conditions, only to the extent that the amount of the **Loss** is in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability for this Coverage Section.

## I. PAYMENT PRIORITY

1. If the amount of any **Loss** which is otherwise due and owing by the **Insurer** exceeds the then-remaining Limit of Liability applicable to the **Loss**, the **Insurer** shall pay the **Loss**, subject to such Limit of Liability, in the following priority:
  - a) first, the **Insurer** shall pay any **Loss** covered under Insuring Clause A1, in excess of any applicable Retention shown in Item C of the Declarations; and
  - b) second, only if and to the extent the payment under paragraph 1.a above does not exhaust the applicable Limit of Liability, the **Insurer** shall pay any **Loss** in excess of the Retention shown in Item C of the Declarations covered under any other applicable Insuring Clause.
  - c) Subject to the foregoing subsection, the **Insurer** shall, upon receipt of a written request from the Chief Executive Officer of the **Parent Organization**, delay any payment of **Loss** otherwise due and owing to or on behalf of the **Organization** until such time as the Chief Executive Officer of the **Parent Organization** designates, provided the liability of the **Insurer** with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

## J. ALLOCATION

If a **Claim** includes both **Loss** that is covered under this **Policy** and loss that is not covered under this **Policy**, either because the **Claim** is made against both **Insureds** and others, or the **Claim** includes both covered allegations and allegations that are not covered, the **Insureds** and the **Insurer** shall allocate such amount between covered **Loss** (except for **Costs, Charges and Expenses**) and loss that is not covered based upon the relative legal and financial exposures and the relative benefits obtained by the parties. The **Insurer** shall not be liable under this **Policy** for the portion of such amount allocated to non-covered **Loss**.

In consideration of the payment of premium, in reliance on the **Application** and subject to the Declarations, and terms and conditions of this **Policy**, the **Insurer** and the **Insureds** agree as follows.

#### **A. INSURING CLAUSES**

##### **1. Employee Insuring Clause**

**Insurer** shall pay the **Loss** of the **Insureds** which the **Insureds** have become legally obligated to pay by reason of an **Employment Practices Claim** first made against the **Insureds** during the **Policy Period** or, if elected, the **Extended Period**, and reported to the **Insurer** pursuant to Section E.1 herein, for an **Employment Practices Wrongful Act** taking place prior to the end of the **Policy Period**.

##### **2. Third Party Insuring Clause**

In the event **Third Party** Coverage is affirmatively designated in Item C of the Declarations relating to this Coverage Section, the **Insurer** shall pay the **Loss** of the **Insureds** which the **Insureds** have become legally obligated to pay by reason of a **Third Party Claim** first made against the **Insureds** during the **Policy Period** or, if elected, the **Extended Period**, and reported to the **Insurer** pursuant to Section E.1 herein, for a **Third Party Wrongful Act** taking place prior to the end of the **Policy Period**.

#### **B. DEFINITIONS**

##### **1. Claim** means any:

- a) **Employment Practices Claim**; or
- b) **Third Party Claim**.

##### **2. Continuity Date** means the Continuity Date set forth in Item C of the Declarations relating to this Coverage Section.

##### **3. Costs, Charges and Expenses** means reasonable and necessary legal costs, charges, fees and expenses incurred by the **Insurer**, or by any **Insured** with the **Insurer's** consent, in defending **Claims** and the premium for appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to furnish such bonds and only for the amount of such judgment that is up to the applicable Limit of Liability. **Costs, Charges and Expenses** do not include salaries, wages, fees, overhead or benefit expenses of or associated with officers or employees of the **Organization**.

##### **4. Employee** means any person who was, now is, or shall become:

- a) a full-time or part-time employee of the **Organization**, including seasonal and temporary employees;
- b) an applicant for employment with the **Organization**;
- c) any natural person who is a leased employee or contracted to perform work for the **Organization**, or is an independent contractor for the **Organization**, but only to the extent such individual performs work or services for or on behalf of the **Organization**; and,
- d) a volunteer whose labor or service is engaged and directed by the **Organization**, but only while that person is acting in the capacity as such.



5. **Employment Practices Claim** means:

- a) a written demand against an **Insured** for damages or other relief;
- b) a civil, judicial, administrative, regulatory or arbitration proceeding against an **Insured** seeking damages or other relief, commenced by the service of a complaint or similar pleading, including any appeal therefrom;
- c) a civil proceeding against an **Insured** before the Equal Employment Opportunity Commission or any similar federal, state or local governmental body, commenced by the filing of a notice of charges, investigative order or similar document;
- d) a criminal proceeding brought for an **Employment Practices Wrongful Act** against any **Insured**, commenced by a return of an indictment or similar document, or receipt or filing of a notice of charges;
- e) a civil, criminal, administrative or regulatory investigation commenced by:
  - (i) the service upon or other receipt by any natural person **Insured** of a written notice, investigative order, or subpoena; or
  - (ii) the service upon or other receipt by any **Organization** of a written notice or investigative order;from the investigating authority identifying such natural person **Insured** as an individual, or such **Organization** as an entity, respectively, against whom a proceeding described in paragraphs b, c or d immediately above may be commenced; or
- f) a written request of the **Insured** to toll or waive a statute of limitations relating to a **Claim** described in paragraphs a through e immediately above;

brought by or on behalf of an **Employee** in his or her capacity as such. **Employment Practices Claim** does not include a labor or grievance proceeding, which is pursuant to a collective bargaining agreement.

6. **Employment Practices Wrongful Act** means any actual or alleged:

- a) violation of any common or statutory federal, state, or local law prohibiting any kind of employment related discrimination;
- b) harassment, including any type of sexual or gender harassment as well as racial, religious, sexual orientation, pregnancy, disability, age, or national origin-based harassment, or unlawful workplace harassment, including workplace harassment by any non-employee;
- c) abusive or hostile work environment;
- d) wrongful discharge or termination of employment, whether actual or constructive;
- e) breach of an actual or implied employment contract;
- f) wrongful deprivation of a career opportunity, wrongful failure or refusal to employ, promote, or grant tenure, or wrongful demotion;
- g) employment-related defamation, libel, slander, disparagement, false imprisonment, misrepresentation, malicious prosecution, or invasion of privacy, or the giving of negative or defamatory statements in connection with an employee reference;
- h) wrongful failure or refusal to adopt or enforce workplace or employment practices, policies or procedures;
- i) wrongful discipline;
- j) employment-related wrongful infliction of emotional distress, mental anguish, or humiliation;

- k) **Retaliation**;
- l) negligent evaluation; or
- m) negligent hiring, supervision, retention or training of others, but only if employment-related and claimed by or on behalf of any **Employee** and only if committed or allegedly committed by any of the **Insureds** in their capacity as such.

7. **Insured Persons** means all persons who were, now are or shall become:

- a) a director, officer, trustee, trustee emeritus, governor, executive director, department head or committee member (of a duly constituted committee of the **Organization**) of the **Organization**;
- b) an **Employee**;
- c) an **Outside Entity Executive**; and,
- d) the functional equivalent of a director, officer or **Employee** in the event the **Organization** is incorporated or domiciled outside the United States.

8. **Insureds** means the **Organization** and any **Insured Persons**.

9. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of facts, circumstances, situations, events, transactions or causes.

10. **Loss** means the damages, judgments, settlements, front pay and back pay, pre-judgment or post-judgment interest awarded by a court, and **Costs, Charges and Expenses** incurred by any of the **Insureds**. **Loss** does not include:

- a) taxes, fines or penalties;
- b) matters uninsurable under the laws pursuant to which this **Policy** is construed;
- c) punitive or exemplary damages, liquidated damages awarded by a court pursuant to a violation of the Equal Pay Act, the Age Discrimination in Employment Act or the Family Medical Leave Act, all as amended, or any rules or regulations promulgated thereunder, or similar provisions of any common or statutory federal, state or local law, or the multiple portion of any multiplied damage award, except to the extent that such punitive, exemplary, or liquidated damages or the multiple portion of any multiplied damage award are insurable under the internal laws of any jurisdiction which most favors coverage for such damages and which has a substantial relationship to the **Insureds, Insurer, this Policy** or the **Claim** giving rise to such damages;
- d) the cost of any remedial, preventative or other non-monetary relief, including without limitation any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement or governmental authority;
- e) amounts owed under any employment contract, partnership, stock or other ownership agreement, or any other type of contract;
- f) disability, social security, workers compensation, medical insurance, retirement or pension benefit payments, or settlement amounts representing benefit payments;
- g) the costs to modify or adapt any building or property to be accessible or accommodating, or to be more accessible or accommodating, to any person;
- h) any amount owed as wages, compensation or commission to any **Employee**, other than front pay or back pay; or

i) any amount for which the **Insured** is not financially liable or legally obligated to pay.

11. **Outside Entity** means:

- a) any non-profit company in which any **Insured Person** as defined in Section B, Definitions, subsection 7, paragraph (a), is a director, officer, trustee, governor, executive director or similar position of such non-profit company; and
- b) any other company specifically identified by endorsement to this **Policy**.

12. **Retaliation** means any actual or alleged response of any of the **Insureds** to:

- a) the disclosure or threat of disclosure by an **Employee** to a superior or to any governmental agency of any act by any of the **Insureds** where such act is alleged to be a violation of any federal, state, local or foreign law, whether common or statutory, or any rule or regulation promulgated thereunder;
- b) the actual or attempted exercise by an **Employee** of any right that such **Employee** has under law, including rights under any worker's compensation law, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights;
- c) the filing of any claim under the Federal False Claims Act or any similar federal, state, local or foreign "whistleblower" law or "whistleblower" provision of any law;
- d) any legally-protected **Employee** work stoppage or slowdown; or
- e) an **Employee** assisting, cooperating or testifying in any proceeding or investigation into whether an **Insured** violated any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder.

13. **Third Party** means any natural person who is a customer, vendor, service provider, client, or other business invitee of the **Organization**, or any other natural person or group of natural persons; provided, however, **Third Party** shall not include any **Employee**.

14. **Third Party Claim** means:

- a) any written demand for damages or other relief against an **Insured**;
- b) a civil, judicial, administrative or arbitration proceeding against an **Insured** seeking damages or other relief, including any appeal therefrom; or
- c) a criminal proceeding brought for an **Employment Practices Wrongful Act** in a court outside of the United States against any **Insured**, commenced by a return of an indictment or similar document, or receipt or filing of a notice of charges;

brought by or on behalf of a **Third Party** in their capacity as such.

15. **Third Party Wrongful Act** means any actual or alleged:

- a) harassment of a **Third Party**, including but not limited to any type of sexual or gender harassment as well as racial, religious, sexual orientation, pregnancy, disability, age, or national origin-based harassment; or
- b) discrimination against a **Third Party**, including but not limited to any such discrimination on account of race, color, religion, age, disability or national origin.

16. **Wrongful Act** means any:

- a) **Employment Practices Wrongful Act**; or

b) **Third Party Wrongful Act.**

**C. EXCLUSIONS**

**Insurer** shall not be liable for **Loss** under this Coverage Section on account of any **Claim**:

1. for actual or alleged bodily injury, sickness, disease or death of any person, or damage to or destruction of any tangible or intangible property including loss of use thereof, whether or not such property is physically injured; provided, however, this exclusion shall not apply to mental anguish, emotional distress or humiliation;
2. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
  - a) any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time; or
  - b) any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** which has been the subject of such notice, would constitute **Interrelated Wrongful Acts**;
3. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving: (i) improper payroll deductions, unpaid wages, misclassification of exempt or non-exempt employee status, compensation earned by or due to the claimant but not paid by the **Insured** (including but not limited to commission, vacation and sick days, retirement benefits, and severance pay), overtime pay for hours actually worked or labor actually performed by any **Employee** of a **Organization**, or any employee of an **Outside Entity**, or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject, or any rules, regulations or amendments thereto; or (ii) any violation of the responsibilities, obligations or duties imposed by the Fair Labor Standards Act (except the Equal Pay Act), as amended, or any rules or regulations promulgated thereunder, or similar provisions of any common or statutory federal, state, local or foreign law. Provided, however, this exclusion does not apply to any back pay or front pay allegedly due as the result of discrimination, or that part of any such **Claim** alleging **Retaliation**;
4. for any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, all as amended, or any rules or regulations promulgated thereunder, or similar provisions of any common or statutory federal, state or local law. Provided, however, this exclusion does not apply to that part of any such **Claim** alleging violations of the Equal Pay Act or **Retaliation**;
5. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any deliberately fraudulent or criminal act; provided, however this exclusion shall not apply unless and until there is a final adjudication against such **Insured** as to such conduct;
6. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
  - a) any prior or pending litigation or administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry, including without limitation any investigation by the U.S. Department of Labor or the U.S. Equal Employment Opportunity Commission, filed or pending on or before the **Continuity Date**; or
  - b) any fact, circumstance, situation, transaction or event underlying or alleged in such litigation or administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry, including any investigation by the U.S. Department of Labor or the U.S. Equal Employment Opportunity Commission;
7. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, any actual or alleged responsibility, obligation or duty of any **Insured** pursuant to any workers compensation, unemployment insurance, social security, disability benefits or pension benefits or

similar law; provided, however, this exclusion shall not apply to that part of any such **Claim** alleging **Retaliation**;

8. for a **Wrongful Act** actually or allegedly committed or attempted by any **Insured Person** in his or her capacity as a director, officer, trustee, manager, member of the board of managers or equivalent executive of a limited liability company or employee of, or independent contractor for or in any other capacity or position with any entity other than the **Organization**; provided, however, that this exclusion shall not apply to **Loss** resulting from any such **Employment Practices Claim** to the extent that:
  - a) such **Employment Practices Claim** is based on the service of any **Insured Person** as defined in Section B, Definitions, subsection 7, paragraph (a), as a director, officer, trustee, governor, executive director or similar position of any **Outside Entity** where such service is with the knowledge and consent of the **Organization**; and
  - b) such **Outside Entity** is not permitted or required by law to provide indemnification to such **Insured Person**; and
  - c) such **Loss** is not covered by insurance provided by any of the **Outside Entity's** insurer(s);
9. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** actually or allegedly committed subsequent to a **Takeover**; or
10. for that portion of **Loss** which is covered under any other Coverage Section of this **Policy**.

No **Wrongful Act** of one or more **Insureds** shall be imputed to any other **Insureds** for the purpose of determining the applicability of any of the above exclusions.

#### **D. LIMIT OF LIABILITY AND RETENTIONS**

1. The liability of the **Insurer** shall apply only to that part of **Loss** which is excess of the Retention amount applicable to this Coverage Section, as shown in Item C of the Declarations. Such Retention shall be borne uninsured by the **Insureds** and at their own risk. If different parts of a single **Claim** are subject to different applicable Retentions under this Coverage Section, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention.
2. The amount set forth in Item C.1. of the Declarations relating to this Coverage Section shall be the maximum aggregate limit of liability for the payment of **Loss**, other than **Costs, Charges and Expenses**, under all Insuring Clauses for this Coverage Section.
3. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** shall be deemed to be a single **Claim**, and such **Claim** shall be deemed to have been made at the earliest of the following times, regardless of whether such date is before or during the **Policy Period**:
  - a) the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made; or
  - b) the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to Section E.2 below.
4. Payments of **Loss**, other than **Costs, Charges and Expenses**, by **Insurer** shall reduce the Limit(s) of Liability under this Coverage Section. **Costs, Charges and Expenses** are not part of, and are in addition to, the Limit(s) of Liability, and payment of **Costs, Charges and Expenses** shall not reduce the Limit(s) of Liability. If such Limit(s) of Liability are exhausted by payment of **Loss**, the obligations of the **Insurer** under this Coverage Section are completely fulfilled and extinguished, including any obligation to pay **Costs, Charges and Expenses** for any **Claim**.

#### **E. NOTIFICATION**

1. The **Insureds** shall, as a condition precedent to their rights to payment under this Coverage Section only, give to **Insurer** written notice of any **Claim** made against the **Insureds** as soon as practicable after the **Organization's** general counsel, risk manager, human resources director, chief executive officer or chief financial officer (or equivalent positions) first becomes aware of such **Claim**, but in no event later than: (a) 60 days after such individual first becomes aware of such **Claim**; or (b) the expiration of the **Policy Period** or **Extended Period**, if purchased, whichever is later.
2. If, during the **Policy Period** or the **Discovery Period**, any of the **Insureds** first becomes aware of facts or circumstances which may reasonably give rise to a future **Claim** covered under this **Policy**, and if the **Insureds**, during the **Policy Period** or the **Discovery Period**, if purchased, give written notice to **Insurer** as soon as practicable of:
  - a) a description of the **Wrongful Act** allegations anticipated;
  - b) the identity of the potential claimants;
  - c) the circumstances by which the **Insureds** first became aware of the **Wrongful Act**;
  - d) the identity of the **Insureds** allegedly involved;
  - e) the consequences which have resulted or may result; and
  - f) the nature of the potential monetary damages and non-monetary relief;

then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Coverage Section to have been made at the time such written notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

3. Notice to **Insurer** shall be given to the address specified in Item G of the Declarations for this **Policy**.

#### F. SETTLEMENT AND DEFENSE

1. It shall be the duty of the **Insurer** and not the duty of the **Insureds** to defend any **Claim**. Such duty shall exist even if any of the allegations are groundless, false or fraudulent. The **Insurer's** duty to defend any **Claim** shall cease when the Limits of Liability have been exhausted by the payment of **Loss**, including the **Insurer's** obligation to pay **Costs, Charges and Expenses**.
2. The **Insurer** may make any investigation it deems necessary and shall have the right to settle any **Claim**; provided, however, no settlement shall be made without the consent of the **Parent Organization**, such consent not to be unreasonably withheld.
3. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Costs, Charges and Expenses** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Costs, Charges and Expenses**, assumed obligation or admission to which it has not consented. The **Insureds** shall promptly send to the **Insurer** all settlement demands or offers received by any **Insured** from the claimant(s).
4. The **Insureds** agree to provide the **Insurer** with all information, assistance and cooperation which the **Insurer** reasonably requests and agree that, in the event of a **Claim**, the **Insureds** will do nothing that shall prejudice the position of the **Insurer** or its potential or actual rights of recovery.
5. If the **Insurer** recommends a settlement within the **Policy** Limit of Liability which is agreed to by the claimant ("**Settlement Opportunity**"), and:
  - a) the **Insureds** consent to such settlement within 30 days of the date the **Insureds** are first made aware of the **Settlement Opportunity**;
  - b) such consent occurs within the first 90 days after the **Claim** is first reported; and

c) such **Claim** is reported within the first 30 days after it is made,

then, in the event the **Claim** settles as a result of such **Settlement Opportunity**, the Retention applicable to such **Claim** shall be retroactively reduced by 10% for such **Loss**. It shall be a condition to such reduction that all **Insureds** must consent to such settlement.

#### G. OTHER INSURANCE

1. Except as set forth in Exclusion 8, for any **Employment Practices Claim**, if any **Loss** covered under this Coverage Section is covered under any other valid and collectible insurance, then this **Policy** shall be primary insurance; provided that with respect to that portion of an **Employment Practice Claim** made against any leased, temporary or independently contracted **Employee**, **Loss**, including **Costs, Charges and Expenses**, payable on behalf of such **Employee** under this Coverage Section will be specifically excess of and will not contribute with such other insurance, including but not limited to any such other insurance under which there is a duty to defend, unless such insurance is specifically stated to be in excess over the Limit of Liability of this Coverage Section.
2. For any **Third Party Claim**, if any **Loss** covered under this Coverage Section is covered under any other valid and collectible insurance, then this **Policy** shall be specifically excess of and will not contribute with such other insurance, including but not limited to any such other insurance under which there is a duty to defend, unless such other insurance is specifically stated to be excess over the Limit of Liability of this Coverage Section.

#### H. ALLOCATION

If a **Claim** includes both **Loss** that is covered under this **Policy** and loss that is not covered under this **Policy**, either because the **Claim** is made against both **Insureds** and others, or the **Claim** includes both covered allegations and allegations that are not covered, the **Insureds** and the **Insurer** shall allocate such amount between covered **Loss** (except for **Costs, Charges and Expenses**) and loss that is not covered based upon the relative legal and financial exposures and the relative benefits obtained by the parties. The **Insurer** shall not be liable under this **Policy** for the portion of such amount allocated to non-covered **Loss**.

In consideration of the payment of premium, in reliance on the **Application** and subject to the Declarations, and terms and conditions of this **Policy**, the **Insurer** and the **Insureds** agree as follows:

#### A. SEVERABILITY OF GENERAL TERMS AND CONDITIONS

These General Terms and Conditions apply to each and every Coverage Section of this **Policy**. The terms and conditions of each Coverage Section apply only to that Coverage Section and shall not be construed to apply to any other Coverage Section.

#### B. DEFINITIONS

Whenever used in this **Policy**, the terms that appear below in **boldface** type shall have the meanings set forth in this Definitions section of the General Terms and Conditions. However, if a term also appears in **boldface** type in a particular Coverage Section and is defined in that Coverage Section, that definition shall apply for purposes of that particular Coverage Section. Terms that appear in **boldface** in the General Terms and Conditions but are not defined in this Definitions section and are defined in other Coverage Sections of the **Policy** shall have the meanings ascribed to them in those Coverage Sections.

1. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insureds** to the **Insurer** in connection with the **Insurer** underwriting this **Policy** or any policy with an inception date within thirty-six months prior to the inception date of this **Policy**, of which this **Policy** is a renewal or replacement. All such applications, attachments, information, materials and documents are deemed attached to and incorporated into this **Policy**.
2. **Discovery Period** means one of the periods described in Item E of the Declarations which is elected and purchased pursuant to section H below.
3. **Domestic Partner** means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Organization**.
4. **Extended Period** means the **Discovery Period** or the **Run-Off Period**, if such provision is elected and purchased pursuant to section H or I, respectively, below.
5. **Insurer** means the insurance company providing this insurance.
6. **Organization** means:
  - a) the **Parent Organization**; and
  - b) any **Subsidiary**;and includes any such organization as a debtor-in-possession or the bankruptcy estate of such entity under United States bankruptcy law or an equivalent status under the law of any other jurisdiction.
7. **Parent Organization** means the entity first named in Item A of the Declarations.
8. **Policy** means, collectively, the Declarations, the **Application**, this policy form and any endorsements.



9. **Policy Period** means the period from the effective date and hour of the inception of this **Policy** to the **Policy** expiration date and hour as set forth in Item B of the Declarations, or its earlier cancellation date and hour, if any.

10. **Run-Off Period** means one of the periods described in Item F of the Declarations, which is elected and purchased pursuant to section I below.

11. **Subsidiary** means:

- a) any entity of which the **Parent Organization** holds more than 50% of the present voting interest, either directly, or indirectly through one or more of its **Subsidiaries**, or has the right to elect or appoint more than 50% of the voting directors or trustees, either directly, or indirectly through one or more of its **Subsidiaries** ("**Control**"), if such entity:
  - (i) was so **Controlled** on or prior to the inception date of this **Policy**; or
  - (ii) becomes so **Controlled** after the inception date of this **Policy**; and
- b) any joint venture entity in which the **Parent Organization**, or an entity described in a) above, has an exact 50% ownership of the interests of such joint venture entity and where, pursuant to a written joint venture agreement, the **Parent Organization** or entity described in a) above solely controls the management and operations of such joint venture entity.

12. **Takeover** means:

- a) the acquisition by any person or entity of all or substantially all of the **Parent Organization's** assets, or of the **Control** of the **Parent Organization**; or
- b) the merger or consolidation of the **Parent Organization** into another entity such that the **Parent Organization** is not the surviving entity.

All definitions shall apply equally to the singular and plural forms of the respective words.

#### **C. LIMITS OF LIABILITY, RETENTIONS AND DEDUCTIBLES**

- 1. If a single Aggregate Limit of Liability is granted as provided in Item C of the Declarations, the amount stated in Item C of the Declarations shall be the maximum aggregate liability of the **Insurer** for all **Loss**, other than **Costs, Charges and Expenses** as indicated in the Coverage Sections, resulting from all **Claims** first made during the **Policy Period**, regardless of Coverage Section. The Limit(s) of Liability of each Coverage Section is part of, and not in addition to, the Aggregate Limit of Liability set forth in Item C of the Declarations and in no way shall be deemed to increase the Aggregate Limit of Liability as set forth therein.
- 2. The Limits of Liability, Retentions and Deductibles for each Coverage Section are separate Limits of Liability, Retentions and Deductibles pertaining only to the Coverage Section for which they are shown. Subject to paragraph 1 above, the application of a Retention or Deductible to **Loss** under one Coverage Section shall not reduce the Retention or Deductible under any other Coverage Section, and no reduction in the Limit of Liability applicable to one Coverage Section shall reduce the Limit of Liability under any other Coverage Section.
- 3. In the event that any **Claim** is covered, in whole or in part, under two or more Insuring Clauses or more than one Coverage Section, the total applicable Retention or Deductible shall not exceed the single largest applicable Retention or Deductible. The largest applicable Retention or Deductible shall apply only once to such **Claim**.

#### **D. WARRANTY AND NON-RESCINDABILITY**

It is warranted that the particulars and statements contained in the **Application** are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy** and each Coverage Section. By acceptance of this **Policy**, the **Insureds** agree that the statements in the **Application** are their representations, that such representations shall be deemed material to the acceptance of the risk or the hazard assumed by **Insurer** under this **Policy**, and that this **Policy** and each Coverage Section are issued in reliance upon the truth of such representations.

For purposes of this section, the knowledge of a natural person **Insured** shall not be imputed to any other natural person **Insured**, and the knowledge of only the chief executive officer, chief financial officer, and general counsel or equivalent positions, shall be imputed to an entity **Insured**.

This **Policy** and any Coverage Sections shall not be rescinded by the **Insurer** in whole or in part for any reason.

#### **E. CANCELLATION**

1. By acceptance of this **Policy**, the **Insureds** hereby confer to the **Parent Organization** the exclusive power and authority to cancel this **Policy** on their behalf. The **Parent Organization** may cancel this **Policy** in its entirety or any of the applicable Coverage Sections individually by surrender thereof to the **Insurer**, or by mailing written notice to the **Insurer** stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation shall be the date the **Insurer** received such notice or any later date specified in the notice, and such effective date shall become the end of the **Policy Period** or applicable Coverage Section. Delivery of such written notice shall be equivalent to mailing.
2. This **Policy** may be cancelled by the **Insurer** only for nonpayment of premium, by mailing written notice to the **Parent Organization** stating when such cancellation shall be effective, such date to be not less than 30 days from the date of the written notice. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by the **Insurer** shall be equivalent to mailing. If the foregoing notice period is in conflict with any governing law or regulation, then the notice period shall be deemed to be the minimum notice period permitted under the governing law or regulation.
3. If this **Policy** or any Coverage Section is cancelled, the **Insurer** shall retain the pro rata proportion of the premium therefore. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation.

#### **F. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES**

The estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** of natural persons who are **Insureds** shall be considered **Insureds** under this **Policy**; provided, however, coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** only for a **Claim** arising solely out of their status as such and, in the case of a spouse or **Domestic Partner**, where the **Claim** seeks damages from marital community property, jointly held property or property transferred from the natural person who is an **Insured** to the spouse or **Domestic Partner**. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or **Domestic Partner**. All of the terms and conditions of this **Policy** including, without limitation, the Retentions and Deductibles applicable to **Loss** incurred by natural persons who are **Insureds** shall also apply to **Loss** incurred by such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners**.

#### **G. AUTHORIZATION CLAUSE**

By acceptance of this **Policy**, the **Parent Organization** agrees to act on behalf of all **Insureds**, and the **Insureds** agree that the **Parent Organization** will act on their behalf, with respect to the giving of all notices to **Insurer**, the receiving of notices from **Insurer**, the agreement to and acceptance of endorsements, the payment of the premium and the receipt of any return premium.

## H. DISCOVERY PERIOD

1. If this **Policy** or any Coverage Section is cancelled or is not renewed by the **Insurer**, for reasons other than non-payment of premium, or if the **Parent Organization** elects to cancel or not to renew this **Policy** or a Coverage Section, then the **Parent Organization** shall have the right, upon payment of an additional premium calculated at that percentage shown in Item E of the Declarations of the total premium for this **Policy**, or the total premium for the cancelled or not renewed Coverage Section, whichever is applicable, to purchase an extension of the coverage granted by this **Policy** or the applicable cancelled or not renewed Coverage Section with respect to any **Claim** first made during the period of time set forth in Item E of the Declarations, after the effective date of such cancellation or, in the event of a refusal to renew, after the **Policy** expiration date, but only with respect to any **Wrongful Act** committed before such date. The **Parent Organization** shall have the right to elect only one of the **Discovery Periods** set forth in Item E of the Declarations.
2. As a condition precedent to the right to purchase the **Discovery Period** set forth in section H.1. above, the total premium for the **Policy** must have been paid. Such right to purchase the **Discovery Period** shall terminate unless written notice, together with full payment of the premium for the **Discovery Period**, is received by **Insurer** within 30 days after the effective date of cancellation, or, in the event of a refusal to renew, within 30 days after the **Policy** expiration date. If such notice and premium payment is not so given to **Insurer**, there shall be no right to purchase the **Discovery Period**.
3. In the event of the purchase of the **Discovery Period**, the entire premium therefore shall be deemed earned at the commencement of the **Discovery Period**.
4. The exercise of the **Discovery Period** shall not in any way increase or reinstate the limit of **Insurer's** liability under any Coverage Section.

## I. RUN-OFF COVERAGE AND TERMINATION OF A SUBSIDIARY

1. In the event of a **Takeover**:
  - a) The **Parent Organization** shall have the right, upon payment of an additional premium calculated at the percentage of the total premium for this **Policy** set forth in Item F of the Declarations, to an extension of the coverage granted by this **Policy** with respect to any **Claim** first made during the **Run-Off Period**, as set forth in Item F of the Declarations, but only with respect to any **Wrongful Act** committed before the effective date of the **Takeover** (herein defined as "**Run-Off Coverage**"); provided, however, such additional premium shall be reduced by the amount of the unearned premium from the date of the **Takeover** or the date of notice of the election of the **Run-Off Coverage**, whichever is later, through the expiration date set forth in Item B of the Declarations.
  - b) The **Parent Organization** shall have the right to elect only one of the periods designated in Item F of the Declarations. The election must be made prior to the expiration of the **Policy Period**. The right to purchase a **Run-Off Period** shall terminate on the expiration of the **Policy Period**.
  - c) If a **Run-off Period** is elected and purchased:
    - (i) Section E, above, is deleted in its entirety and neither the **Insureds** nor the **Insurer** may cancel this **Policy** or any Coverage Section thereof;
    - (ii) Section H, above, is deleted in its entirety; and
    - (iii) the Limit(s) of Liability of the **Insurer** for **Run-Off Coverage** for each Coverage Section purchased, and in the aggregate, shall be part of, and not in addition to, the Limit(s) of Liability shown in the Declarations. The purchase of the **Run-Off Coverage** shall not increase or reinstate the Limit(s) of Liability, which shall be the maximum Limit(s) of Liability of the **Insurer** for the **Policy Period** and the **Run-off Coverage**, combined.
2. If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to the **Subsidiary** and its natural person **Insureds** shall continue until termination of this **Policy**. Such

coverage continuation shall apply only with respect to **Claims for Wrongful Acts, or Employment Practices Wrongful Acts**, taking place prior to the date such organization ceased to be a **Subsidiary**.

#### **J. ALTERNATIVE DISPUTE RESOLUTION**

The **Insureds** and the **Insurer** shall submit any dispute or controversy arising out of or relating to this **Policy** or the breach, termination or invalidity thereof to the alternative dispute resolution (“**ADR**”) process described in this subsection.

Either an **Insured** or the **Insurer** may elect the type of **ADR** process discussed below; provided, however, that the **Insured** shall have the right to reject the choice by the **Insurer** of the type of **ADR** process at any time prior to its commencement, in which case the choice by the **Insured** of **ADR** process shall control.

There shall be two choices of **ADR** process: (1) non-binding mediation administered by any mediation facility to which the **Insurer** and the **Insured** mutually agree, in which the **Insured** and the **Insurer** shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing commercial mediation rules of the mediation facility; or (2) non-binding arbitration submitted to any arbitration facility to which the **Insured** and the **Insurer** mutually agree, in which the arbitration panel shall consist of three disinterested individuals. In either mediation or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, and insurance issues relevant to the matters in dispute. In the event of arbitration, the decision of the arbitrators shall be provided to both parties, and the award of the arbitrators shall not include attorneys’ fees or other costs. In the event of either mediation or arbitration, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the conclusion of the arbitration, or in the event of mediation, at least 60 days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the **ADR** process.

Either **ADR** process may be commenced in New York, New York or in the state indicated in Item A of the Declarations as the principal address of the **Parent Organization**. The **Parent Organization** shall act on behalf of each and every **Insured** in connection with any **ADR** process under this section.

#### **K. TERRITORY**

Where legally permissible, coverage under this **Policy** shall extend to **Wrongful Acts** taking place or **Claims** made anywhere in the world.

#### **L. ASSISTANCE, COOPERATION AND SUBROGATION**

The **Insureds** agree to provide **Insurer** with such information, assistance and cooperation as **Insurer** reasonably may request, and they further agree that they shall not take any action which in any way increases **Insurer's** exposure under this **Policy**. In the event of any payments under this **Policy**, **Insurer** shall be subrogated to the extent of such payment to all of the **Insureds'** rights of recovery against any person or entity. The **Insureds** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights, including the execution of such documents as are necessary to enable **Insurer** effectively to bring suit or otherwise pursue subrogation in the name of the **Insureds**, and shall provide all other assistance and cooperation which **Insurer** may reasonably require.

#### **M. ACTION AGAINST INSURER, ALTERATION AND ASSIGNMENT**

Except as provided in section J above, Alternative Dispute Resolution, no action shall lie against **Insurer** unless, as a condition precedent thereto, there shall have been compliance with all of the terms of this **Policy**. No person or organization shall have any right under this **Policy** to join **Insurer** as a party to any action against the **Insureds** to determine their liability, nor shall **Insurer** be impleaded by the **Insureds** or their legal representative. No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the **Insurer**.

#### **N. BANKRUPTCY**

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Insurer** of its obligations nor deprive the **Insurer** of its rights or defenses under this **Policy**. The insurance provided by this **Policy** is intended as a matter of priority to protect and benefit the natural person **Insureds** such that, in the event of bankruptcy of the **Organization**, the **Insurer** shall first pay **Loss** covered under Insuring Clause A1 of the **Insured Persons** and **Organization** Coverage Section, and under the Employment Practices Liability Coverage Section for which the **Organization** is not permitted or required to indemnify the natural person **Insured**, prior to paying **Loss** under any other Insuring Clause. If a liquidation or reorganization proceeding is commenced by the **Parent Organization** or any other **Organization** (whether voluntary or involuntary) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law (collectively, "**Bankruptcy Law**") then, in regard to a covered **Claim** under this **Policy**, the **Insureds** hereby waive and release any automatic stay or injunction ("**Stay**") to the extent such **Stay** may apply to the proceeds of this **Policy** under such **Bankruptcy Law**, and agree not to oppose or object to any efforts by the **Insurer** or any **Insured** to obtain relief from the **Stay** applicable to the proceeds of this **Policy** as a result of such **Bankruptcy Law**.

#### **O. ENTIRE AGREEMENT**

By acceptance of this **Policy**, the **Insureds** agree that this **Policy** embodies all agreements existing between them and **Insurer** or any of their agents relating to this insurance. Notice to any agent or knowledge possessed by any agent or other person acting on behalf of **Insurer** shall not effect a waiver or a change in any part of this **Policy** or estop **Insurer** from asserting any right under the terms of this **Policy** or otherwise, nor shall the terms be deemed waived or changed except by written endorsement or rider issued by **Insurer** to form part of this **Policy**.

## UNLIMITED EXTENSION

Named Insured Museum of Chinese in America			Endorsement Number PF434120614
Policy Symbol NFP	Policy Number NFPNYG280847173-006	Policy Period 03-13-2021 To 03-13-2022	Effective Date of Endorsement 03-13-2021
Issued By (Name of Insurance Company) Pacific Employers Insurance Company			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

### **ACE EXPRESS NOT-FOR-PROFIT ORGANIZATION MANAGEMENT INDEMNITY POLICY**

It is agreed that **Policy** is amended as follows:

1. The Insured Persons and Organization Coverage Section is amended to add the following:

- If the **Parent Organization** shall cancel or non-renew this **Policy** for a reason other than being sold, acquired or bankrupt, each **Executive** or **Employee** who did not serve as such at the time of the cancellation or non-renewal, shall be provided an unlimited extension of time to report any **Claim(s)** first made against such person after the effective date of such cancellation or non-renewal.

However, this extension of time to report **Claim(s)** shall only be afforded in the event that:

1. The **Wrongful Act** was committed before the date of cancellation or non-renewal; and
2. The person was an **Executive** or **Employee** during the **Policy Period** of a policy issued by the **Insurer**, provided the **Insurer** has written continuous coverage for the **Parent Organization** from the effective date of the first policy to the date of cancellation or non-renewal of this **Policy**; and
3. No Directors and Officers Liability policy, or policy providing essentially the same type of coverage, or extended reporting period, is in effect at the time the **Claim** is made.

2. The Employment Practices Liability Coverage Section is amended to add the following:

- If the **Parent Organization** shall cancel or non-renew this **Policy** for a reason other than being sold, acquired or bankrupt, each director or officer who did not serve as such at the time of the cancellation or non-renewal, shall be provided an unlimited extension of time to report any **Claim(s)** first made against such person after the effective date of such cancellation or non-renewal.

However, this extension of time to report **Claim(s)** shall only be afforded in the event that:

1. The **Employment Practices Wrongful Act** was committed before the date of cancellation or non-renewal; and
2. The person was a director or officer during the **Policy Period** of a policy issued by the **Insurer**, provided the **Insurer** has written continuous coverage for the **Parent Organization** from the effective date of the first policy to the date of cancellation or non-renewal of this **Policy**; and

3. No Directors and Officers Liability or Employment Practices Liability policy, or policy providing essentially the same type of coverage, or extended reporting period, is in effect at the time the **Claim** is made.

This endorsement is a part of the **Parent Organization's Policy** and takes effect on the inception date of the **Parent Organization's Policy** unless another inception date is shown.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

# Westchester

A Chubb Company

Employers today face a dizzying array of employment laws, regulations and ongoing employment issues. Whether it involves employee discipline or termination, wage and hour, disability accommodation, or even the new frontier of social media, failure to comply with the ever-changing legal requirements can have a devastating impact on employee morale and the company's bottom line. Westchester recognizes the unique burdens faced by employers today, and is pleased to announce that it has partnered with the nation's foremost employment and labor law firm, Littler Mendelson (Littler), to create a cutting edge employment practices risk management tool for Westchester insureds, called EPL Assist™. With over 975 attorneys in 56 offices, Littler has both the expertise and the capacity to handle any employment matter, big or small. Through EPL Assist™, insureds have an unlimited ability to seek out expert advice and counsel as a benefit of the program.

## What is EPL Assist™?

EPL Assist™ is a cutting edge risk management program providing policyholders with a wide variety of legal content, forms and analysis, combined with the ability to interface directly with Littler lawyers dedicated to assisting Westchester insureds in navigating what has become an employment law minefield. Through a secure web portal containing essential employment law resources and tools, as well as a toll free hotline service, Westchester insureds with primary EPL coverage policies now have access to the content and advice necessary to compete in today's challenging legal environment.

## Insureds are provided:

- No cost, online and live access to the legal experts at Littler, the largest employment and labor firm in the U.S.
- Employment law updates, newsletters and related publications
- A compendium of online employment law resources through a secure website, including unlimited access to such content as:
  - Employment policies and practices
  - Human Resources forms library
  - Sample employee handbooks, including supplement information for all 50 states
  - State and national employment law summaries and reference materials
  - 50 state surveys on various employment law essentials, including such things as minimum wage and overtime requirements, protected classifications, new hire reporting requirements, meal and rest break requirements, and voting rights requirements
- Free harassment training webinars for up to 10 supervisors or managers
- Complimentary registration to Littler's nationwide breakfast briefing series
- Complimentary access to Littler's webinars and podcasts
- Discounted rates for various Littler events

## How do I access EPL Assist™?

Policyholders can simply visit [www.EPLAssist.com](http://www.EPLAssist.com) to register or take a tour. Should you have a question on an employment situation please call 1-888-244-3844 or visit [www.EPLAssist.com](http://www.EPLAssist.com).

Littler Mendelson P.C. is an independent law firm that is not an agent nor an affiliate of the Chubb Group of Companies ("CHUBB"), and Littler Mendelson P.C. is solely responsible for the advice and guidance provided directly, or through the EPL Assist website. Chubb and Littler Mendelson P.C. cannot guarantee that there will be fewer or less serious claims as a result of using the program. Littler Mendelson P.C. directly, or through the EPL Assist website may help an insured with risk assessment and improvement but it is not intended to supplant any duty to provide a workplace that is safe and complies with the law. Chubb does not engage in giving legal advice and therefore encourages policyholders to seek the advice from their own legal counsel when implementing any and all employment practices. Please note that communication with Littler Mendelson P.C., either directly, or through the EPL Assist website is not notice to the Chubb issuing company of a claim or an act or situation that may give rise to a claim. Nothing herein alters or amends in any way the insurance policy contract between the underwriting company and the policyholder.



## SIGNATURES

Named Insured <b>Museum of Chinese in America</b>			Endorsement Number <b>CC1K11i0218</b>
Policy Symbol <b>NFP</b>	Policy Number <b>NFPNYG280847173 -006</b>	Policy Period <b>2021-03-13 to 2022-03-13</b>	Effective Date of Endorsement <b>2021-03-13</b>
Issued By (Name of Insurance Company) <b>Pacific Employers Insurance Company</b>			

THE ONLY COMPANY APPLICABLE TO THIS POLICY IS THE COMPANY NAMED ON THE FIRST PAGE OF THE DECLARATIONS.

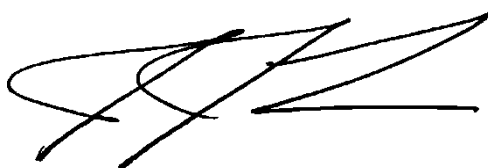
By signing and delivering the policy to you, we state that it is a valid contract.

**INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** (A stock company)  
**BANKERS STANDARD INSURANCE COMPANY** (A stock company)  
**ACE AMERICAN INSURANCE COMPANY** (A stock company)  
**ACE PROPERTY AND CASUALTY INSURANCE COMPANY** (A stock company)  
**INSURANCE COMPANY OF NORTH AMERICA** (A stock company)  
**PACIFIC EMPLOYERS INSURANCE COMPANY** (A stock company)  
**ACE FIRE UNDERWRITERS INSURANCE COMPANY** (A stock company)  
**WESTCHESTER FIRE INSURANCE COMPANY** (A stock company)

436 Walnut Street, P.O. Box 1000, Philadelphia, Pennsylvania 19106-3703



REBECCA L. COLLINS, Secretary



JOHN J. LUPICA, President

## SEXUAL MISCONDUCT, CHILD ABUSE, NEGLECT EXCLUSION

Named Insured Museum of Chinese in America			Endorsement Number PF184800909
Policy Symbol NFP	Policy Number NFPNYG280847173-006	Policy Period 03-13-2021 To 03-13-2022	Effective Date of Endorsement 03-13-2021
Issued By (Name of Insurance Company) Pacific Employers Insurance Company			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

**ACE EXPRESS NOT-FOR-PROFIT ORGANIZATION MANAGEMENT INDEMNITY POLICY**

It is agreed that the **Policy** is amended as follows:

1. Section B, Definitions, of the Insured Persons and Organization Coverage Section, is amended to add the following:
  - **Sexual Misconduct** means any licentious, immoral or sexual behavior, sexual abuse, sexual assault, or molestation intended to lead to or culminating in any attempted or actual sexual act.
2. Section C, Exclusions, of the Insured Persons and Organization Coverage Section, subsection 1, Exclusions Applicable To All Insuring Clauses, is amended to add the following:
  - alleging, based upon, arising out of, or attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any **Sexual Misconduct**, child abuse, or neglect, including but not limited to employment, supervision, reporting to authorities, failure to so report or retention of any person alleged to have engaged in such misconduct.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Named Insured <b>Museum of Chinese in America</b>			Endorsement Number <b>PF184810705</b>
Policy Symbol <b>NFP</b>	Policy Number <b>NFPNYG280847173-006</b>	Policy Period <b>03-13-2021 To 03-13-2022</b>	Effective Date of Endorsement <b>03-13-2021</b>
Issued By (Name of Insurance Company) <b>Pacific Employers Insurance Company</b>			

**SEXUAL MISCONDUCT, CHILD ABUSE, NEGLECT EXCLUSION**

It is agreed that Section C. of the Employment Practices Coverage Section is amended by the addition of the following:

alleging, based upon, arising out of, or attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any **Sexual Misconduct**, child abuse, or neglect, including but not limited to employment, supervision, reporting to authorities, failure to so report or retention of any person.

It is further understood and agreed that Section B. of Employment Practices Coverage Section is amended to include the following:

**Sexual Misconduct** means any licentious, immoral or sexual behavior, sexual abuse, sexual assault, or molestation intended to lead to or culminating in any attempted or actual sexual act.

All other terms, conditions and limitations of said **Policy** shall remain unchanged.

## PROFESSIONAL SERVICES ERRORS AND OMISSIONS EXCLUSIONS

Named Insured Museum of Chinese in America			Endorsement Number PF184900909
Policy Symbol NFP	Policy Number NFPNYG280847173-006	Policy Period 03-13-2021 To 03-13-2022	Effective Date of Endorsement 03-13-2021
Issued By (Name of Insurance Company) Pacific Employers Insurance Company			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

**ACE EXPRESS NOT-FOR-PROFIT ORGANIZATION MANAGEMENT INDEMNITY POLICY**

It is agreed that Section C, Exclusions, of the Insured Persons and Organization Coverage Section, subsection 1, Exclusions Applicable To All Insuring Clauses, is amended to add the following:

- alleging, based upon, arising out of, or attributable to, directly or indirectly resulting from, in consequence of, or in any way involving the rendering or failure to render professional services.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

**EPL COVERAGE SECTION AMENDED TO INCLUDE WAGE AND HOUR CLAIMS  
COSTS, CHARGES AND EXPENSES COVERAGE ONLY  
SUBLIMIT FOR MULTIPLE PLAINTIFF CLAIMS**

Named Insured Museum of Chinese in America		Endorsement Number PF391900813	
Policy Symbol NFP	Policy Number NFPNYG280847173-006	Policy Period 03-13-2021 To 03-13-2022	Effective Date of Endorsement 03-13-2021
Issued By (Name of Insurance Company) Pacific Employers Insurance Company			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

**ACE EXPRESS NOT-FOR-PROFIT ORGANIZATION MANAGEMENT INDEMNITY POLICY**

It is agreed that the Employment Practices Coverage Section is amended as follows:

1. Section A, **INSURING CLAUSES**, subsection 1, **Employee** Insuring Agreement, is amended by adding the following:

The **Insurer** shall pay on behalf of the **Insureds** all **Costs, Charges and Expenses** which the **Insureds** have become legally obligated to pay by reason of a **Wage and Hour Claim** first made against the **Insureds** during the **Policy Period** or, if elected, the **Extended Period**, and reported to the **Insurer** pursuant to subsection E1 herein, for any **Employment Practices Wrongful Act** taking place prior to the end of the **Policy Period**. The coverage afforded under this Insuring Agreement is subject to the applicable Limit(s) of Liability stated in Item C of the Declarations, except for **Wage and Hour Claims** brought or maintained as **Multiple Plaintiff Claims**. Respecting such **Multiple Plaintiff Claims**, the maximum limit of the **Insurer's** liability for all **Costs, Charges and Expenses** in the aggregate arising from all such **Multiple Plaintiff Claims** shall be \$100,000 (hereinafter known as the **Sub-limit of Liability**). This **Sub-limit of Liability** shall be part of and not in addition to the otherwise applicable aggregate Limit of Liability stated in the Declarations, and will in no way serve to increase such Limit of Liability.

This **Policy** shall not afford any coverage for **Loss** arising out of any **Wage and Hour Claim**, or attributable solely to any actual or alleged violation of any **Wage and Hour Law(s)**, other than **Costs, Charges and Expenses**.

In the event a **Multiple Plaintiff Claim** alleges any of the acts or omissions set forth in paragraph n) of the definition of **Employment Practices Wrongful Act** (as amended below), as well as any other covered **Employment Practices Wrongful Act**, the **Sub-limit of Liability** shall apply to those **Costs, Charges and Expenses** attributable to that portion of the **Multiple Plaintiff Claim** alleging the acts or omissions set forth in paragraph n). The applicable Limit of Liability stated in Item C of the Declarations shall apply to those **Costs, Charges and Expenses**, and all other **Loss**, attributable to that portion of the **Multiple Plaintiff Claim** alleging the other covered **Employment Practices Wrongful Act**.

2. Solely with respect to the coverage provided by this endorsement, the definition of **Employment Practices Wrongful Act** in Section B, Definitions, is amended by adding the following at the end thereof:
  - n) (i) violation of any **Wage and Hour Law**; or (ii) improper payroll deductions, failure to pay wages, misclassification of exempt or non-exempt employee status, failure to pay compensation earned by or due to the claimant (including but not limited to commission, vacation and sick days, retirement benefits, and severance pay), failure to pay overtime pay for hours actually worked or labor actually performed, or any violation of any law, rule or regulation, or amendments thereto (whether statutory or common law, or otherwise), that governs the same topic or subject.

3. Solely with respect to the coverage provided by this endorsement, Section C, Exclusions, is

amended by deleting Exclusion 3 in its entirety and adding the following:

**Insurer** shall not be liable for **Loss** under this Coverage Section attributable to that portion of any **Claim**:

- alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any violation of any California or Florida state or local **Wage and Hour Law**;
- which is brought or made in California or Florida alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any violation of any **Wage and Hour Law**.

4. Solely for purposes of this endorsement:

**Multiple Plaintiff Claim** means any **Claim** brought as a class action, whether certified or not; brought by more than one claimant or plaintiff; or brought by one claimant or plaintiff and joined or consolidated with another **Claim(s)** brought by one claimant or plaintiff.

**Wage and Hour Claim** means any **Claim**, or that portion of any **Claim**, alleging, based upon, arising out of, or attributable to: (i) any violation of any **Wage and Hour Law**; and/or (ii) improper payroll deductions, unpaid wages, misclassification of exempt or non-exempt employee status, compensation earned by or due to the claimant but not paid (including but not limited to commission, vacation and sick days, retirement benefits, and severance pay), overtime pay for hours actually worked or labor actually performed, or any violation of any law, rule or regulation, or amendments thereto (whether statutory or common law, or otherwise), that governs the same topic or subject.

**Wage and Hour Law** means: (i) the Fair Labor Standards Act (except the Equal Pay Act), as amended, or any rules or regulations promulgated thereunder, or similar provisions of any common or statutory federal, state, local or foreign law, or amendments thereto; and/or (ii) any law, rule or regulation, or amendments thereto (whether statutory or common law, or otherwise) governing or relating to: (a) the payment of wages, including payment of unpaid salary, hourly pay, on-call time and overtime pay; and/or (b) the classification of employees for purposes of determining employees' eligibility for compensation under such law, rules or regulations.

All other terms and conditions of this **Policy** remain unchanged.



**KNOWN WRONGFUL ACT, FACT, CIRCUMSTANCE SITUATION EXCLUSION**

Named Insured <b>Museum of Chinese in America</b>			Endorsement Number <b>PF435340714</b>
Policy Symbol <b>NFP</b>	Policy Number <b>NFPNYG280847173-006</b>	Policy Period <b>03-13-2021</b> <b>To</b> <b>03-13-2022</b>	Effective Date of Endorsement <b>03-13-2021</b>
Issued By (Name of Insurance Company) <b>Pacific Employers Insurance Company</b>			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

**ACE EXPRESS NOT-FOR-PROFIT ORGANIZATION MANAGEMENT INDEMNITY PACKAGE**

It is agreed that Section C, Exclusions, of the Employment Practices Coverage Section and Insured Persons and Organization Coverage Section is amended by adding the following exclusion:

Insurer shall not be liable for **Loss** under this Coverage Section on account of any **Claim**:

- alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, any **Wrongful Act**, fact, circumstance or situation which any of the **Insureds** had knowledge of prior to the **Continuity Date** where such **Insureds** had reason to believe at the time that such known **Wrongful Act** could reasonably be expected to give rise to such **Claim**;

All other terms and conditions of this **Policy** remain unchanged.

## AMENDATORY ENDORSEMENT – NEW YORK

Named Insured Museum of Chinese in America			Endorsement Number PF442671114
Policy Symbol NFP	Policy Number NFPNYG280847173 -006	Policy Period 03-13-2021 To 03-13-2022	Effective Date of Endorsement 03-13-2021
Issued By (Name of Insurance Company) Pacific Employers Insurance Company			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

### **ACE EXPRESS NOT-FOR-PROFIT ORGANIZATION MANAGEMENT INDEMNITY PACKAGE**

IF THERE IS ANY CONFLICT BETWEEN THE **POLICY**, OTHER ENDORSEMENTS TO THE **POLICY** AND THIS ENDORSEMENT, THE TERMS PROVIDING THE BROADEST COVERAGE INSURABLE UNDER APPLICABLE LAW SHALL PREVAIL.

It is agreed that:

1. If form PF-28169, Employment Practices Liability Coverage Section is included in this **Policy**, Section **A. INSURING CLAUSES** is deleted in its entirety and replaced by the following:

#### **A. INSURING CLAUSES**

1. **Employee** Insuring Clause

**Insurer** shall pay on behalf of the **Insureds** for all **Loss** which the **Insureds** have become legally obligated to pay by reason of an **Employment Practices Claim** first made against the **Insureds** during the **Policy Period** or, if elected, the **Extended Period**, and reported to the **Insurer** pursuant to Section E.1 herein, for an **Employment Practices Wrongful Act** taking place prior to the end of the **Policy Period**.

2. **Third Party** Insuring Clause

In the event **Third Party** Coverage is affirmatively designated in Item C of the Declarations relating to this Coverage Section, the **Insurer** shall pay on behalf of the **Insureds** for all **Loss** which the **Insureds** have become legally obligated to pay by reason of a **Third Party Claim** first made against the **Insureds** during the **Policy Period** or, if elected, the **Extended Period**, and reported to the **Insurer** pursuant to Section E.1 herein, for a **Third Party Wrongful Act** taking place prior to the end of the **Policy Period**.

2. If form PF-28169, Employment Practices Liability Coverage Section is included in this **Policy**, the following changes are made:
  - a. Definition 6. **Employment Practices Wrongful Act** is deleted in its entirety and the following is inserted:
    6. **Employment Practices Wrongful Act** means any actual or alleged:

- a) violation of any common or statutory federal, state, or local law prohibiting any kind of employment related discrimination; however, coverage for discrimination will only be provided on a vicarious basis or for disparate impact;
  - b) harassment, including any type of sexual or gender harassment as well as racial, religious, sexual orientation, pregnancy, disability, age, or national origin-based harassment, or unlawful workplace harassment, including workplace harassment by any non-employee; however, coverage will not be provided to any person who allegedly or actually participates in, directs or knowingly allows any act of sexual misconduct;
  - c) abusive or hostile work environment;
  - d) wrongful discharge or termination of employment, whether actual or constructive;
  - e) breach of an actual or implied employment contract;
  - f) wrongful deprivation of a career opportunity, wrongful failure or refusal to employ, promote, or grant tenure, or wrongful demotion;
  - g) employment-related defamation, libel, slander, disparagement, false imprisonment, misrepresentation, malicious prosecution, or invasion of privacy, or the giving of negative or defamatory statements in connection with an employee reference;
  - h) wrongful failure or refusal to adopt or enforce workplace or employment practices, policies or procedures;
  - i) wrongful discipline;
  - j) employment-related wrongful infliction of emotional distress, mental anguish, or humiliation;
  - k) **Retaliation**; however, this does not apply to intentional acts;
  - l) negligent evaluation; or
  - m) negligent hiring, supervision, retention or training of others, but only if employment-related and claimed by or on behalf of any **Employee** and only if committed or allegedly committed by any of the **Insureds** in their capacity as such.
- b. The first paragraph of Definition 10. **Loss** is deleted in its entirety and replaced by the following:
10. **Loss** means the damages, judgments, settlements, front pay and back pay, or pre-judgment interest awarded by a court, and **Costs, Charges and Expenses** incurred by any of the **Insureds**. **Loss** does not include:
- c. Definition 15. **Third Party Wrongful Act** is deleted in its entirety and the following is inserted:
15. **Third Party Wrongful Act** means any actual or alleged:
- a) harassment of a **Third Party**, including but not limited to any type of sexual or gender harassment as well as racial, religious, sexual orientation, pregnancy, disability, age, or national origin-based harassment; however, coverage will not be provided to any person who allegedly or actually participates in, directs or knowingly allows any act of sexual misconduct; or

- b) discrimination against a **Third Party**, including but not limited to any such discrimination on account of race, color, religion, age, disability or national origin; however, coverage for discrimination will only be provided on a vicarious basis or for disparate impact.
- 3. If form PF-28169, Employment Practices Liability Coverage Section is included in this **Policy**, the following changes are made to Section **C. EXCLUSIONS**:
  - a. Exclusion 3. is deleted in its entirety and replaced by the following:
    - 3. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving: (i) improper payroll deductions, unpaid wages, misclassification of exempt or non-exempt employee status, compensation earned by or due to the claimant but not paid by the **Insured** (including but not limited to commission, vacation and sick days, retirement benefits, and severance pay), overtime pay for hours actually worked or labor actually performed by any **Employee** of a **Organization**, or any employee of an **Outside Entity**, or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject, or any rules, regulations or amendments thereto; or (ii) any violation of the responsibilities, obligations or duties imposed by the Fair Labor Standards Act (except the Equal Pay Act), as amended, or any rules or regulations promulgated thereunder, or similar provisions of any common or statutory federal, state, local or foreign law. Provided, however, this exclusion does not apply to any back pay or front pay allegedly due as the result of discrimination, or that part of any such **Claim** alleging **Retaliation** not including intentional acts;
  - b. Exclusion 4. is deleted in its entirety and replaced by the following:
    - 4. for any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, all as amended, or any rules or regulations promulgated thereunder, or similar provisions of any common or statutory federal, state or local law. Provided, however, this exclusion does not apply to that part of any such **Claim** alleging violations of the Equal Pay Act or **Retaliation** not including intentional acts;
  - c. Exclusion 5. is deleted in its entirety and replaced by the following:
    - 5. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any deliberately fraudulent or criminal act;
  - d. Exclusion 7. is deleted in its entirety and replaced by the following:
    - 7. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, any actual or alleged responsibility, obligation or duty of any **Insured** pursuant to any workers compensation, unemployment insurance, social security, disability benefits or pension benefits or similar law; provided, however, this exclusion shall not apply to that part of any such **Claim** alleging **Retaliation** not including intentional acts;
- 4. If form PF-28169, Employment Practices Liability Coverage Section is included in this **Policy**, Paragraph 1. Section **E. NOTIFICATION** is deleted in its entirety and replaced by the following:
  - 1. The **Insureds** shall, as a condition precedent to their rights to payment under this Coverage Section only, give to **Insurer** written notice of any **Claim** made against the **Insureds** as soon as practicable after the **Organization's** general counsel, risk manager, human resources director, chief executive officer or chief financial officer (or equivalent positions) first becomes aware of such **Claim**.

5. If form PF-28169, Employment Practices Liability Coverage Section is included in this **Policy**, Paragraph 1. Section **F. SETTLEMENT AND DEFENSE** is deleted in its entirety and replaced by the following:

1. It shall be the duty of the **Insurer** and not the duty of the **Insureds** to defend any **Claim**. Such duty shall exist even if any of the allegations are groundless, false or fraudulent. The **Insurer's** duty to defend any **Claim** shall cease when the Limits of Liability have been exhausted by the payment of **Loss**.

6. If form PF-28169, Employment Practices Liability Coverage Section or PF-28172, Insured Persons and Organization Coverage Section is included in this **Policy**, the following is being added to the **NOTIFICATION** Section:

Notice by the **Insured** or on the **Insured's** behalf to any of the **Insurer's** authorized agents, with particulars sufficient to identify the **Insured**, will be deemed to be notice to the **Insurer**. Failure to give notice to the **Insurer** in the time prescribed will not invalidate any **Claim** made by the **Insured**, an injured person, or any other claimant, unless the failure to provide such timely notice has prejudiced the **Insurer**. However, no **Claim** made by the **Insured**, an injured person, or any other claimant will be invalidated if it shall be shown not to have been reasonably possible to give such timely notice and that notice was given as soon as reasonably possible thereafter. If the **Insurer** disclaims liability or denies coverage based upon the failure to provide timely notice, then the injured person or other claimant may maintain an action directly against such **Insurer**, in which the sole question is the **Insurer's** disclaimer or denial based on the failure to provide timely notice, unless within sixty days following such disclaimer or denial, the **Insured** or the **Insurer**: (A) initiates an action to declare the rights of the parties under the insurance policy; and (B) names the injured person or other claimant as a party to the action.

7. If form PF-28172, Insured Persons and Organization Coverage Section is included in this **Policy**, Section **A. INSURING CLAUSES** is deleted in its entirety and replaced by the following:

#### **A. INSURING CLAUSES**

1. The **Insurer** shall pay on behalf of the **Insured Persons** for **Loss** which the **Insured Persons** are not indemnified by the **Organization** and which the **Insured Persons** have become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Period**, and reported to the **Insurer** pursuant to section E.1 herein, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.
2. The **Insurer** shall pay on behalf of the **Organization** for **Loss** which the **Organization** has indemnified the **Insured Persons** and which the **Insured Persons** have become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Period**, and reported to the **Insurer** pursuant to section E.1 herein, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.
3. The **Insurer** shall pay on behalf of the **Organization** for **Loss** which the **Organization** becomes legally obligated to pay by reason of a **Claim** first made against the **Organization** during the **Policy Period** or, if applicable, the **Extended Period**, and reported to the **Insurer** pursuant to section E.1 herein, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.
4. **Special Event** Management Coverage

The **Insurer** shall pay on behalf of the **Organization** for the **Special Event Management Expense** for which the **Organization** becomes legally obligated to pay by reason of a **Special**

**Event** first occurring during the **Policy Period**, but only up to the limit of liability for the **Special Event Management Fund**.

8. If form PF-28172, Insured Persons and Organization Coverage Section is included in this **Policy**, the definition of **Excess Benefit** is deleted in its entirety.
9. If form PF-28172, Insured Persons and Organization Coverage Section is included in this **Policy**, the definition of **Loss** is deleted in its entirety and replaced by the following:
  11. **Loss** means damages, judgments, settlements, or pre-judgment interest awarded by a court, and **Costs, Charges and Expenses** incurred by **Insured Persons** under Insuring Clauses 1 or 2, or the **Organization** under Insuring Clause 3.

**Loss** does not include:

- a) taxes, fines or penalties;
- b) matters uninsurable under the laws pursuant to which this **Policy** is construed;
- c) punitive or exemplary damages, or the multiple portion of any multiplied damage award, except to the extent that such punitive or exemplary damages, or multiplied portion of any multiplied damage award are insurable under the internal laws of any jurisdiction which most favors coverage for such damages and which has a substantial relationship to the **Insureds, Insurer, this Policy** or the **Claim** giving rise to such damages;
- d) the cost of any remedial, preventative or other non-monetary relief, including without limitation any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement or governmental authority;
- e) any amount for which the **Insured** is not financially liable or legally obligated to pay;
- f) the costs to modify or adapt any building or property to be accessible or accommodating, or more accessible or accommodating, to any person; or,
- g) **Special Event Management Expense**.

Subject to the other terms, conditions and exclusions of this **Policy**, **Loss** shall also include **Costs, Charges and Expenses** for items specifically excluded from **Loss** pursuant to (a) through (f) above, including, but not limited to, **Costs, Charges and Expenses** incurred in connection with a **Tax Claim**.

10. If form PF-28172, Insured Persons and Organization Coverage Section is included in this **Policy**, the definition of **Special Event** is deleted in its entirety and replaced by the following:
  15. **Special Event** means one of the following, except where coverage is otherwise excluded under Exclusions 1(b) or (k) of this Coverage Section:
    - a) The incapacity, death or state or federal criminal indictment of an **Insured Person** for whom the **Organization** has purchased and continues to maintain key individual life insurance;
    - b) The cancellation, withdrawal or revocation of \$100,000 or more in funding, donation(s), grant(s) or bequest(s) by a non-government entity or person to the **Organization**;

- c) The disclosure by the **Organization** of (1) its intention to file or its actual filing for protection under federal bankruptcy laws; or, (2) a third-party's intention to file or its actual filing of an involuntary bankruptcy petition under federal bankruptcy laws with respect to the **Organization**;
- d) The disclosure by the **Organization** of the threatened or actual commencement by a third-party of an action, audit or investigation alleging a **Wrongful Employment Practice** (as defined in the Employment Practices Coverage Section) by the **Organization** which has caused or is reasonably likely to cause **Adverse Publicity**;
- e) The commencement or threat of litigation or other proceedings by any governmental or regulatory agency against an **Organization**;
- f) An **Employee** of the **Organization** was the victim of a violent crime while on the premises of the **Organization**;
- g) A child was abducted or kidnapped while under the care or supervision of the **Organization**; or
- h) Any other material event which, in the good faith opinion of the **Organization**, has caused or is reasonably likely to result in **Adverse Publicity**, but only if such material event is scheduled for coverage by written endorsement to this **Policy**.

11. If form PF-28172, Insured Persons and Organization Coverage Section is included in this **Policy**, the definition of **Pollutants** in section C. **EXCLUSIONS**, is deleted in its entirety and replaced by the following:

**Pollutants** mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

12. If form PF-28172, Insured Persons and Organization Coverage Section is included in this **Policy**, Paragraph f) of section C. **EXCLUSIONS**, is deleted in its entirety and replaced by the following:

- f) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
  - (i) any deliberately fraudulent or criminal act of an **Insured**; or
  - (ii) the gaining of any profit, remuneration or financial advantage to which any **Insured Person** was not legally entitled.

13. If form PF-28172, Insured Persons and Organization Coverage Section is included in this **Policy**, Paragraph 1. of section F. **NOTIFICATION**, is deleted in its entirety and replaced by the following:

- 1. The **Insureds** shall, as a condition precedent to their rights to payment under this Coverage Section only, give **Insurer** written notice of any **Claim** as soon as practicable after the **Organization's** general counsel, risk manager, chief executive officer or chief financial officer (or equivalent positions) first becomes aware of such **Claim**.

14. If form PF-28172, Insured Persons and Organization Coverage Section is included in this **Policy**, Paragraph 1. of section G. **SETTLEMENT AND DEFENSE**, is deleted in its entirety and replaced by the following:

1. It shall be the duty of the **Insurer** and not the duty of the **Insureds** to defend any **Claim**. Such duty shall exist even if any of the allegations are groundless, false or fraudulent. The **Insurer's** duty to defend any **Claim** shall cease when the Limits of Liability have been exhausted by the payment of **Loss**.
15. If form PF-28169, Employment Practices Liability Coverage Section or PF-28172, Insured Persons and Organization Coverage Section is included in this **Policy**, the following provision is being added:

#### **SUPPLEMENTARY PAYMENTS**

The **Insurer** will pay, with respect to any **Claim** the **Insurer** investigates or settles, or any suit against an **Insured** the **Insurer** defends when the duty to defend exists, all interest on the full amount of any judgment that accrues after entry of the judgment and before the **Insurer** has paid, offered to pay, or deposited in court the part of the judgment that is within the applicable Limits of Liability. These payments will not reduce the Limits of Liability.

16. Paragraph 4 of Section **B. DEFINITIONS** of the General Terms and Conditions is deleted in its entirety and replaced by the following:

4. **Extended Period** means the **Discovery Period**, if such provision is elected and purchased pursuant to section H below.

17. Paragraph 9 of Section **B. DEFINITIONS** of the General Terms and Conditions is deleted in its entirety

18. Section **B. DEFINITIONS** of the General Terms and Conditions is amended by the addition of the following:

**Termination of Coverage** means, whether made by the **Parent Organization** or **Insurer** at any time:

1. Cancellation or nonrenewal of this **Policy**; or
2. Decrease in limits, reduction of coverage, increased deductible or self-insured retention, new exclusion, or any other change in coverage less favorable to the **Parent Organization**.

19. Paragraph 3. of Section **C. LIMITS OF LIABILITY, RETENTIONS AND DEDUCTIBLES** is deleted in its entirety and replaced by the following:

2. In the event that any **Claim** is covered, in whole or in part, under two or more Insuring Clauses or more than one Coverage Section, the **Insurer** shall not be liable under this **Policy** for a greater proportion of such **Loss** than the applicable Limit of Liability stated in the Declarations bears to the total applicable Limit of Liability of all valid and collectible insurance against such **Loss**.

20. Paragraph 2. of Section **E. CANCELLATION** of the General Terms and Conditions, is deleted in its entirety and replaced with the following:

3. If this **Policy** has been in effect for 60 days or less, and is not a renewal of a policy previously issued by the **Insurer**, this **Policy** may be cancelled by or on behalf of the **Insurer** by mailing or delivering to the **Parent Organization's** authorized agent or broker and to the **Parent Organization** at the address shown in Item 1. of the Declarations written notice of cancellation stating the reason for cancellation at least 20 days before the effective date of cancellation. If cancellation is for nonpayment of premium, the notice of cancellation shall include the amount of premium that is due.



After this **Policy** has been in effect for more than 60 days or after the effective date of renewal, this **Policy** may only be cancelled by or on behalf of the **Insurer** for one of the following reasons:

- 1) nonpayment of premium;
- 2) conviction of a crime arising out of acts increasing the hazard insured against;
- 3) discovery of fraud or material misrepresentation in obtaining the **Policy** or in the presentation of a **Claim** thereunder;
- 4) after issuance of this **Policy** or after the last renewal date, discovery of an act or omission, or a violation of any **Policy** condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current **Policy Period**;
- 5) a determination by the Superintendent that the **Insurer's** continuation of the present premium volume would jeopardize the **Insurer's** solvency or be hazardous to the interests of the **Insurer's** policyholders, the **Insurer's** creditors or the public; or
- 6) a determination by the Superintendent that the continuation of the **Policy** would violate, or would place the **Insurer** in violation of New York law.

Cancellation shall be effected by mailing or delivering to the **Parent Organization's** authorized agent or broker and to the **Parent Organization** at the address shown in Item 1. of the Declarations written notice of cancellation specifying the grounds for cancellation at least 15 days before the effective date of cancellation. If cancellation is for nonpayment of premium, the notice of cancellation shall include the amount of premium that is due. Proof of mailing of notice of cancellation shall be sufficient proof of notice and the effective date of cancellation stated in the notice will become the end of the **Policy Period**. Delivery of written notice either by the **Parent Organization** or by the **Insurer** shall be equivalent to mailing.

21. Section **H. DISCOVERY PERIOD**, of the General Terms and Conditions, is deleted in its entirety and replaced by the following:

1. Upon any **Termination of Coverage** for reasons other than nonpayment of premium or fraud within the first year of claims-made coverage with the **Insurer**, the **Parent Organization** shall have the right to a **Discovery Period**. The **Insurer** will advise the **Parent Organization** in writing of the Automatic **Discovery Period** and the availability of, the premium for, and the importance of purchasing, the Optional **Discovery Period**. This notice will be sent no earlier than the date of notification of **Termination of Coverage**, and no later than 30 days after the effective date of the **Termination of Coverage**.
2. The **Parent Organization** shall have the right to a period of 60 days following **Termination of Coverage** (referred to as the Automatic **Discovery Period**), in which to give notice to the **Insurer** of **Claims** first made against any **Insured** during said 60 day period, for any **Wrongful Act** committed on or after the retroactive date and prior to the effective date of **Termination of Coverage**, and otherwise covered by this **Policy**.
3. The **Parent Organization** shall have the option to purchase an Optional **Discovery Period**. The Optional **Discovery Period** will be made available to the **Parent Organization** for the following durations:
  - a) One (1) year for 50% of the total annual premium
  - b) Two (2) years for 100% of the total annual premium
  - c) Three (3) years for 150% of the total annual premium

The Optional **Discovery Period** shall cover **Claims** first made against any **Insured** during the period of time outlined above for **Wrongful Acts** committed on or after the retroactive date and prior to the effective date of **Termination of Coverage**, and otherwise covered by this **Policy**.

4. The **Parent Organization** must notify the **Insurer** in writing of its intent to purchase an Optional **Discovery Period** and must pay the additional premium. The **Parent Organization** shall have the greater of the following in which to submit such notice to the **Insurer**:
  - a) 60 days after the effective date of **Termination of Coverage**; or
  - b) 30 days after the date that the **Insurer** mails notice advising the **Parent Organization** of the availability of the Optional **Discovery Period**.

If the **Parent Organization** elects to purchase the Optional **Discovery Period**, the Optional **Discovery Period** coverage will not take effect until the premium owed for the **Policy** is paid in full, and the premium owed for the Optional **Discovery Period** coverage is paid in full and promptly when due.

5. The aggregate Limit of Liability for the Optional **Discovery Period** shall be at least equal to the amount of coverage remaining in the **Policy's** aggregate Limit of Liability.
6. During a claims-made relationship and any Optional **Discovery Period**, a person employed or otherwise affiliated with the **Parent Organization** and covered by the **Parent Organization's** claims-made policy during such affiliation, shall continue to be covered under such policy and any Optional **Discovery Period** after such affiliation has ceased for such person's covered acts or omissions during such affiliation.
7. A claims-made policy issued to a corporation, partnership or other entity shall provide Optional **Discovery Period** coverage upon **Termination of Coverage** to any person covered under the **Policy**, if:
  - a) such entity has been placed in liquidation or bankruptcy or permanently ceases operations;
  - b) the entity or its designated trustee does not purchase Optional **Discovery Period** coverage; and
  - c) such person requests the Optional **Discovery Period** coverage within 120 days of the **Termination of Coverage**.

The **Insurer** shall have no obligation to provide any notice to any such person of the availability of the Optional **Discovery Period** coverage. The **Insurer** may charge the person for whom Optional **Discovery Period** coverage is provided a premium commensurate with such coverage.

8. The additional premium for the Optional **Discovery Period** shall be based upon the rates in effect at the beginning of the **Policy Period** and the amount will be set forth in Item E of the Declarations.
9. Where premium is due to the **Insurer** for coverage under this **Policy**, any monies received by the **Insurer** from the **Parent Organization** as payment for the Optional **Discovery Period** shall first be applied to such premium owing for the **Policy**. All premiums paid with respect to the Optional **Discovery Period** shall be deemed fully earned as of the first day of the Optional **Discovery Period**.

22. Section I. **RUN-OFF COVERAGE AND TERMINATION OF A SUBSIDIARY** of the General Terms and Conditions, is deleted in its entirety and replaced by the following:

**I. TERMINATION OF A SUBSIDIARY**

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to the **Subsidiary** and its natural person **Insureds** shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims for Wrongful Acts**, or **Employment Practices Wrongful Acts**, taking place prior to the date such organization ceased to be a **Subsidiary**.

23. Section **M. ACTION AGAINST INSURER, ALTERATION AND ASSIGNMENT** of the General Terms and Conditions, is deleted in its entirety and replaced by the following:

Except as provided in section J above, Alternative Dispute Resolution, if judgment against an **Insured** is not satisfied within 30 days, an action can be brought against the **Insurer**. No action shall lie against **Insurer** unless, as a condition precedent thereto, there shall have been compliance with all of the terms of this **Policy**. No person or organization shall have any right under this **Policy** to join **Insurer** as a party to any action against the **Insureds** to determine their liability, nor shall **Insurer** be impleaded by the **Insureds** or their legal representative. No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the **Insurer**.

24. The following sections are added to the **Policy**:

- **NONRENEWAL AND RENEWAL**

Should the **Insurer** decide to nonrenew this **Policy** or conditions its renewal upon a change in the limit of liability, change in type of coverage, reduction of coverage, increased retention, the addition of any exclusion or an increase in premium in excess of 10%, then the **Insurer** shall mail or deliver written notice of the refusal to renew or the conditional renewal to the **Parent Organization** at the principal address shown in Item 1. of the Declarations and to the **Parent Organization's** authorized agent or broker, if applicable, at least 60 days but not more than 120 days before the end of the of the **Policy Period**. Such notice shall contain the specific reasons for the nonrenewal or the conditional renewal and shall set forth the amount or a reasonable estimate of any premium increase and describe any additional proposed changes.

If the **Insurer** does not provide notice of nonrenewal or conditional renewal as provided in this section, coverage will remain in effect at the same terms and conditions of this **Policy** at the lower of the current rates or the prior period's rates until 60 days after such notice is mailed or delivered unless the **Parent Organization**, during this 60-day period, has replaced the coverage or elects to cancel in which event such cancellation shall be on a pro rata premium basis; provided, however, that if the **Insurer** elects to renew on the basis of the conditional renewal notice, then such terms, conditions and rates shall govern the policy upon expiration of such 60 day period unless such notice was provided at least 30 days prior to the expiration date of the **Policy**, in which event the terms, conditions and rates set forth in the conditional renewal notice shall apply as of the renewal date.

If the **Insurer** provides notice of nonrenewal or conditional renewal on or after the expiration date of this **Policy**, coverage will remain in effect at the same terms and conditions of this **Policy** for another **Policy Period**, at the lower of the current rates or the prior policy period's rates, unless the **Parent Organization**, during the additional **Policy Period**, has replaced the coverage or elects to cancel, in which event such cancellation shall be on a pro rata premium basis.

The **Insurer** will not send the **Parent Organization** notice of nonrenewal or conditional renewal if the **Parent Organization**, the **Parent Organization's** authorized agent or another insurer of the **Parent Organization** mails or delivers notice that the **Policy** has been replaced or is no longer desired.

If the **Parent Organization** elects to accept the terms, conditions and rates of the conditional renewal notice pursuant to the Cancellation provisions, a new limit of insurance shall become effective as of the inception date of renewal, subject to regulations promulgated by the Superintendent of Insurance.

- **TRANSFER OF DUTIES WHEN A LIMIT OF INSURANCE IS EXHAUSTED**

1. If the **Insurer** concludes that, based on incidents, occurrences, offenses, **Claims** or suits which have been reported to the **Insurer** and to which this **Policy** may apply, that any limit (each **Claim**, each incident, each occurrence, aggregate, or other) under the **Policy** is likely to be exhausted in the payment of judgments or settlements, the **Insurer** will notify the **Insured**, in writing, to that effect.
2. When a limit of liability described above has actually been exhausted in the payment of judgments or settlements:
  - (a) The **Insurer** will notify the **Insureds**, in writing, as soon as practicable, that:
    - (i) such a limit has actually been exhausted; and
    - (ii) the **Insurer's** duty to defend suits seeking damages subject to that limit has ended.
  - (b) The **Insurer** will initiate, and cooperate in, the transfer of control, to any appropriate **Insured**, of all **Claims** seeking damages which are subject to that limit and which are reported to the **Insurer** before that limit is exhausted. The **Insured** must cooperate in the transfer of control of said **Claims**.

The **Insurer** agrees to take such steps, as the **Insurer** deems appropriate, to avoid a default in, or continue the defense of, such **Claims** until such transfer is completed, provided the appropriate **Insured** is cooperating in completing such transfer. The **Insurer** has no obligation to take any action whatsoever with respect to any **Claim** seeking damages that would have been subject to that limit, had it not been exhausted, if the **Claim** is reported to the **Insurer** after that limit of liability has exhausted.

- (c) The **Insured** involved in a **Claim** seeking damages subject to that limit, must arrange for the defense of such **Claim** within such time period as agreed to between the appropriate **Insured** and the **Insurer**. Absent any such agreement, arrangements for the defense of such **Claim** must be made as soon as practicable.
3. The **Insured** will reimburse the **Insurer** for expenses the **Insurer** incurs in taking those steps the **Insurer** deems appropriate in accordance with paragraph 2.b. above.

The duty of the **Insured** to reimburse the **Insurer** will begin on:

- (a) the date on which the applicable limit of liability is exhausted, if the **Insurer** sent notice in accordance with paragraph 1. above; or
- (b) the date on which the **Insurer** sent notice in accordance with paragraph 2.a. above, if the **Insurer** did not send notice in accordance with paragraph 1. above.
4. The exhaustion of any limit of liability by the payments of judgments or settlements, and the resulting end of the **Insurer's** duty to defend, will not be affected by the **Insurer's** failure to comply with any of the provisions of this condition.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

## FIDUCIARY LIABILITY COVERAGE ENDORSEMENT – NEW YORK

Named Insured Museum of Chinese in America			Endorsement Number PF447401114
Policy Symbol NFP	Policy Number NFPNYG280847173-006	Policy Period 03-13-2021 To 03-13-2022	Effective Date of Endorsement 03-13-2021
Issued By (Name of Insurance Company) Pacific Employers Insurance Company			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**This Endorsement Modifies Insurance Provided Under The Following:**

### **ACE EXPRESS NOT-FOR-PROFIT ORGANIZATION MANAGEMENT INDEMNITY POLICY**

-Solely with respect to the Fiduciary Liability coverage afforded by this endorsement, it is agreed that the **Policy** is amended as follows:

1. Insured Persons and Organization Coverage Section is amended as follows:
  - a. Section B, Definitions, subsection 5, **Employee**, paragraph c), is deleted in its entirety and the following is inserted:
    - However, an **Employee** is not a volunteer.
  - b. Section B, Definitions, subsection 8, **Insured**, is deleted in its entirety and the following inserted:
    8. **Insured** means the **Organization**, and **Employee Benefit Plan** and any **Insured Person**.
  - c. Section B, Definitions, subsection 9, **Insured Person**, is deleted in its entirety and the following inserted:
    9. **Insured Person** means any **Fiduciary**.
  - d. Section B, Definitions, subsection 2, **Claim**, is amended to add the following:
    - **Claim** shall include a **Fiduciary Claim**.
  - e. Section B, Definitions, subsection 11, **Loss**, is amended to add the following:
    - **Loss** shall include damages and settlements which an **Insured** is legally obligated to pay as a result of a **Wrongful Fiduciary Act**, including a civil penalty of up to five percent (5%) imposed upon any **Fiduciary** under Section 502 (i) of **ERISA** and a civil penalty of up to twenty percent (20%) imposed upon an **Insured** under section 502 (l) of **ERISA**.

**Loss** does not mean:

  - a. That portion of any settlement or judgment which constitutes benefits due or to become due or which would be due, under the terms of an **Employee Benefit Plan**, including but not limited to attorney fees incurred by a beneficiary to recover benefits except to the extent that benefits and attorney's fees are payable as a personal obligation of a **Fiduciary** because of a **Wrongful Fiduciary Act**;

- b. Any **Loss** which is based upon, arises out of or is in consequence of the failure of an **Insured** to collect or ensure the collection of contributions owed by the **Organization** to an **Employee Benefit Plan** unless the failure is because of the negligence of any **Fiduciary**: or
- c. The return or reversion to the **Organization** of any **Employee's** contribution to the **Insured** if such contribution is or could be chargeable to any **Employee Benefit Plan**.

f. Section B, Definitions, subsection 21, **Wrongful Act**, is amended to add the following:

- **Wrongful Act** shall include a **Wrongful Fiduciary Act**.

g. Section B, Definitions, is amended to add the following:

- **Administration** means providing advice, counsel (other than legal advice), notice or interpretation to individual **Employees**, participants or beneficiaries with respect to an **Employee Benefit Plan**; handling individual records in connection with an **Employee Benefit Plan**; or performing duties in connection with the enrollment, termination or cancellation of **Employees**, participants or beneficiaries under an **Employee Benefit Plan**. **Administration** does not mean performing duties required under **ERISA** for the notification and education of plan participants as a group, concerning any **Employee Benefits Plan**.
- **ERISA** means the Employee Retirement Income Security Act of 1974.
- **Fiduciary** means any past, present or future director, officer, trustee or **Employee** of the **Organization** who exercises discretionary authority or discretionary control respecting management of an **Employee Benefit Plan** or management or disposition of its assets, renders or has authority or responsibility to render investment advice for a fee, or has discretionary authority or responsibility in the administration of such plan.
- **Fiduciary Claim** means:
  - (1) Any written notice received by any **Insured** that any person or entity intends to hold such **Insured** responsible for a **Wrongful Fiduciary Act**; or
  - (2) Any written demand for monetary or non-monetary relief received by any **Insured** seeking to hold such **Insured** responsible for a **Wrongful Fiduciary Act**; or
  - (3) Any judicial or administrative proceeding initiated against any **Insured** seeking to hold such **Insured** responsible for a **Wrongful Fiduciary Act**.

A **Fiduciary Claim** shall be considered first made when an **Insured** or its legal representative or agent first receives notice of such claim.

- **Employee Benefit Plan** means any employee welfare benefit plan(s) or employee pension benefit plan(s) identified in the **Application** for this **Policy** as each are defined by **ERISA**, which is sponsored by the **Organization** solely for the benefit of **Employees** of the **Organization**. **Employee Benefit Plan** does not mean workers' compensation, unemployment insurance, social security, or disability benefits or any similar benefits provided under any federal, state, or local law or common law.
- **Wrongful Fiduciary Act** means any actual or alleged breach of the responsibilities, obligations or duties imposed on a **Fiduciary** by **ERISA**. The same **Wrongful Fiduciary Act**, and interrelated series of **Wrongful Fiduciary Acts** or a series of similar or related **Wrongful**

**Fiduciary Acts** by one or more **Insureds** shall be deemed to be one **Wrongful Fiduciary Act** and to have commenced at the time of the earliest **Wrongful Fiduciary Act**.

However, **Wrongful Fiduciary Act** does not mean any actual or alleged negligent act, error or omission in the **Administration** of any **Employee Benefit Plan** by a **Fiduciary** or the **Organization**.

- h. Section C, Exclusions, subsection 1, Exclusions Applicable to All Insuring Clauses, paragraph c), is deleted in its entirety.
  - i. Section C, Exclusions, subsection 1, Exclusions Applicable to All Insuring Clauses, is amended to add the following:
    - alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving the **Organization's** or any **Fiduciary's** failure to obtain or maintain adequate insurance or bonds covering **Employee Benefit Plan** property or assets;
  - j. Section D, Limit of Liability and Retentions, is amended to add the following:
    - The maximum limit of liability of the **Insurer** for all **Fiduciary Claims** shall be the lesser of the amount specified in Item C.1.c of the portion of Declarations entitled Insured Persons and Organization or \$1,000,000 ("**Fiduciary Claim Sub-Limit of Liability**"). The **Fiduciary Claim Sub-Limit of Liability** shall include **Costs, Charges and Expenses**, and shall be part of, and not in addition to, the Aggregate Limit of Liability as set forth in Item C of the Declarations. The **Fiduciary Claim Sub-Limit of Liability** will in no way serve to increase the **Insurer's** maximum liability under the **Policy**.
2. Section I, Run-Off Coverage and Termination of a Subsidiary, of the General Terms and Conditions, is amended to add the following:
- If after the inception date of this **Policy**:
    - a) an **Employee Benefit Plan** for which coverage is provided under this **Policy** is merged with an **Employee Benefit Plan** for which coverage is also provided under this **Policy**, this **Policy** shall continue in full force and effect as respects both plans; or
    - b) an **Employee Benefit Plan** for which coverage is provided under this **Policy** is merged with another **Employee Benefit Plan** for which coverage is not provided under this **Policy**, this **Policy** shall continue in full force and effect as respects the Covered Plan as to a **Wrongful Fiduciary Act** occurring prior to the date of such merger, but coverage will cease as respects any actual or alleged **Wrongful Fiduciary Act** occurring after the merger; or
    - c) an **Employee Benefit Plan** is sold or terminated, this **Policy** shall continue in full force and effect as respects a **Wrongful Fiduciary Act** occurring prior to the date of the sale or termination, but coverage will cease as respects any actual or alleged **Wrongful Fiduciary Act** occurring after the date of the sale or termination; provided that the **Parent Organization** shall give the **Insurer** written notice of such merger, sale or termination as soon as practicable, but not later than thirty (30) days after the effective date of the merger, sale or termination.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

# *Westchester*

A Chubb Company

## **Chubb Producer Compensation Practices & Policies**

Westchester believes that policyholders should have access to information about Westchester's practices and policies related to the payment of compensation to brokers and independent agents. You can obtain that information by accessing our website at <http://www.chubbproducercompensation.com> or by calling the following toll-free telephone number: 1-866-512-2862.

ALL-20887 (10/06)



# U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's web site – <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Named Insured <b>Museum of Chinese in America</b>			Endorsement Number <b>PF453540115</b>
Policy Symbol <b>NFP</b>	Policy Number <b>NFPNYG280847173-006</b>	Policy Period <b>03-13-2021 to 03-13-2022</b>	Effective Date of Endorsement <b>03-13-2021</b>
Issued By (Name of Insurance Company) <b>Pacific Employers Insurance Company</b>			

**Cap On Losses From Certified Acts Of Terrorism**

- A. If aggregate insured losses attributable to terrorist acts certified under the federal Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

“Certified act of terrorism” means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a “certified act of terrorism” include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

- B. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any “loss” that is otherwise excluded under this Policy.

All other terms and conditions of this Policy remain unchanged.

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Authorized Representative

## TRADE OR ECONOMIC SANCTIONS ENDORSEMENT

Named Insured <b>Museum of Chinese in America</b>		Endorsement Number <b>PF464220715</b>	
Policy Symbol <b>NFP</b>	Policy Number <b>NFPNYG280847173 -006</b>	Policy Period <b>03-13-2021 To 03-13-2022</b>	Effective Date of Endorsement <b>03-13-2021</b>
Issued By (Name of Insurance Company) <b>Pacific Employers Insurance Company</b>			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

### **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This insurance does not apply to the extent that trade or economic sanctions or similar laws or regulations prohibit us from providing insurance, including, but not limited to, the payment of claims. All other terms and conditions of policy remain unchanged.

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Authorized Agent